

In the United States₃
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA, *ex rel.* FRANCIS E. EVANS,
as British Consul for the Southern District of California and for Arizona,

Appellant,

vs.

ALEX GRAHAM, alias STRAKOSCH, who gives his true name
as ALEXANDER STRAKOSCH,

Appellee.

APPELLEE ALEXANDER STRAKOSCH'S
ANSWERING BRIEF.

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Statement as to the Case.

A proceeding was originally commenced October 14, 1937, by the filing with David B. Head, United States Commissioner for the Southern District of California, etc., at Los Angeles, by the Attorney of the United States for the Southern District of California, of a complaint [Transcript of Record p. 36 *et seq.*] entitled

“In the Matter of the Extradition of ALEXANDER STRAKOSCH, a Fugitive from the Justice of Great Britain, No. 5774”

(NOTE: All words and figures in brackets or underscored, or italicized, or printed in capitals, are ours, except where obviously otherwise.)

for and in behalf of the Government of Great Britain, to extradite said Alexander Strakosch (formerly an Austrian subject, but now a German National) from Los Angeles, California, to London, England.

Thereupon, and on October 14, 1937, a warrant in extradition for the arrest of said Alexander Strakosch was issued by said Commissioner Head and served by the United States Marshal of said District, and also thereafter and on said October 14, 1937, a warrant of temporary commitment of Strakosch was also issued.

Thereafter, and on November 16, 1937, a *second* complaint was filed [Tr. p. 44 *et seq.*] entitled "Amended Complaint in Extradition on Charge of the Government of Great Britain", and appellee is then described as "Alex Graham, alias Strakosch".

And thereafter and on December 7, 1937, a *third* complaint was filed entitled "Second Amended Complaint in Extradition on Charge of the Government of Great Britain" [Tr. p. 67 *et seq.*].

Said Second Amended Complaint in Extradition alleged, *inter alia* [par. I, Tr. p. 68 *et seq.*] that an information was filed by the Director of Public Prosecutions of Great Britain with Alderman Sir Harry Twyford Knight, one of his Majesty's Justices of the Peace for the City of London, England, supported by the depositions of Peter McIntyre Hunter, etc. (here appear in the original the names of thirty witnesses, all of which names are hereinafter set forth, but omitted here to avoid repetition) upon an application for a warrant for the arrest of one Stanley Grove Spiro, and the accused Alex Graham, otherwise Strakosch, on charges of crimes and offenses against the Larceny Act of 1916 of Great Britain, alleged to have been

committed in Great Britain, particulars of which said charges are more particularly set forth in the warrant of arrest referred to as Exhibit A of said Second Amended Complaint.

This English Warrant of Arrest, dated September 13, 1937, and made a part of and appearing as Exhibit A of said "Second Amended Complaint," begins on page 88 and ends on page 96 of the transcript of record, and contains *only eleven* charges or counts against Stanley Grove Spiro, and Alex Graham, otherwise Strakosch, of violation of sections 32 and 20 of the Larceny Act, 1916, of Great Britain, or part or parts of said sections respectively, and which charges or counts are specifically designated in such English Warrant of Arrest as, and under the headings (a), (b), (c), (d), (e), (f), (g), (h), (j), (k) and (l). Said English Warrant of Arrest commands the Constables and other peace officers to whom directed, to apprehend the said accused, Spiro and Strakosch, and bring them before said Justice of the Peace H. Twyford Knight, or some other Justice, *to answer unto the said charges,—that is, the aforesaid eleven charges, and none other.* [Tr. p. 96.]

However, said Second Amended Complaint filed by the British Consul at Los Angeles *contains and sets forth nineteen charges or counts* against Spiro and Appellee Strakosch, designated as and under the headings (a), (b) [Tr. p. 75], (c-1) [Tr. p. 76], (c-2), (d) [Tr. p. 77], (e) [Tr. p. 78], (f), (g-1) [Tr. p. 79], (g-2) (g-3) [Tr. p. 80], (h) [Tr. p. 81], (j-1), (j-2) [Tr. p. 82], (j-3), (k-1) [Tr. p. 83], (k-2) [Tr. p. 84], (k-3), (l-1) [Tr. p. 85], and (l-2) [Tr. p. 86].

The *ex parte* affidavits, or so-called depositions of said thirty (30) witnesses constituted the only evidence sub-

mitted in support of said counts or charges, although the names of "Strakosch" or "Graham" *appeared in only eighteen (18) of such affidavits.*

The list of names of such witnesses again appears in "British Consul's Exhibit No. 1" commencing on page 170 of transcript of record, and their names and occupations, or case connection, appear in the following order, to-wit:

- Peter McIntyre Hunter [Tr. p. 182] Stock Broker
Luis Sancha [Tr. p. 183] Company Director
Agnes Elizabeth Payn [Tr. p. 184] Official of Registry of Business Names
George William Baldwin [Tr. p. 185] Civil Servant
Leonard Peter Darsley [Tr. p. 186] Official in Registry of Company
Francis Joseph Mildner [Tr. p. 191] Printer
John Henry Turner [Tr. p. 192] a Party Defrauded
Reginald Harry East [Tr. p. 195] a Party Defrauded
Peter Daniel [Tr. p. 199] a Party Defrauded
Charles Wood [Tr. p. 202] Solicitor
William Scott [Tr. p. 205] a Party Defrauded
John Cooper Russell [Tr. p. 208] a Party Defrauded
William Fothergill [Tr. p. 211] a Party Defrauded
Frank Plater [Tr. p. 214] a Party Defrauded
Benjamin Waters [Tr. p. 215] Civil Servant
Charles Walter Engel [Tr. p. 218] Company Secretary
Frederick William Dove [Tr. p. 220] Concessionaire
Claude Morse-Stephens [Tr. p. 221] Incorporated Secretary
May Lilian Phillips [Tr. p. 222] Shorthand Typist

Ruby Isabel Croucher [Tr. p. 225] Typist

Rose Kathleen Watson [Tr. p. 227] Shorthand Typist

Ethel Mary Lowry [Tr. p. 230] Typist

Alexander Michael Jones [Tr. p. 231] Managing Director

David Kerman [Tr. p. 233] Managing Director

Owen Wyatt Williams [Tr. p. 234] Chartered Accountant

George Edmund Walker Bridge [Tr. p. 239] Secretary of Trustees of Sir Francis Graham Moon Bart, Deceased

Francis Jackson [Tr. p. 240] a Party Defrauded

Charles Henry Row [Tr. p. 242] a Party Defrauded

Edwin Clayton [Tr. p. 244] Solicitor and Chief Clerk of Director of Public Prosecutions, and

Thomas Gankerseer [Tr. p. 246] Detective Inspector.

Among the foregoing *thirty* deponents, there appear to be only *nine* deponents who claimed to have been defrauded, to-wit:

(1) John Henry Turner (who never mentioned "Strakosch" or "Graham")

(2) Reginald Harry East

(3) Peter Daniel

(4) Frank Plater (who, also, never mentioned "Strakosch" or "Graham")

(5) William Scott

(6) John Cooper Russell (who, also, never mentioned "Strakosch" or "Graham")

(7) William Fothergill (who, also, never mentioned "Strakosch" or "Graham")

(8) Francis Jackson, and

(9) Charles Henry Row.

Hearing Before Commissioner Head.

The hearing upon said Second Amended Complaint was held before said Commissioner on the 7th, 10th and 13th days of December, 1937. [Tr. p. 117.]

After submission of the evidence, consisting of said thirty (30) *ex parte* affidavits or depositions, the argument of counsel representing appellant and appellee Strakosch proceeded; and during such argument and as the same progressed Commissioner Head on at least ten occasions expressed his doubts as to whether the record justified the extradition of appellee Strakosch. We here quote a few citations from Commissioner Head's observations, from time to time during argument, and as follows:

"In reading these depositions I have considerable doubt as to whether this defendant has been identified as one of the principals in the case. That is the point." [Tr. p. 366.]

Then again

"But the question arises in my mind as to whether they have identified him with any of the fraudulent transactions." [Tr. p. 366.]

Then again

"The only thing I am asking Mr. Hankey is to show me where he has identified this accused with the frauds that are alleged here." [Tr. p. 368.]

Then again

"I am familiar with the evidence, but I will confess that I have doubts." [Tr. p. 369.]

Then again

“I have read these depositions now, and I read them twice; and I have been over portions of them since that time. So I am pretty familiar with the depositions.

“The only question in my mind, Mr. Hankey—I say, there is no doubt but what you have identified this accused as Strakosch—the only question in my mind is this: As to whether you have offered sufficient evidence to connect him with any of these fraudulent dealings.” [Tr. p. 371.]

Then again

“You have pointed to the weakness in counsel’s case, and that is the difficulty of identifying Strakosch as participating in any one particular fraud.” [Tr. p. 376.]

Then again

“Whether or not it is evidence at all; that is the point.” [Tr. p. 379.]

Then again

“I think I have explained just where my difficulty comes in the matter, and that it is not a question of a crime being committed. That is definite.” [Tr. p. 379.]

Then again

“The particular matter that I called your attention to at the last session was what appeared to me to be the weak part of your case, and that is, that there was very little direct reference to Strakosch in the

depositions; and I was asking you to point out to me the direct references.

“However, in the meantime I have again re-read the depositions and have given particular attention to those particular ones referring to Graham, and I believe now that you have a better case. I feel that your case is a better one than I thought it to be.” [Tr. pp. 403-404.]

Then again

“That is the trouble. They don’t know what name he was calling under. [Tr. p. 405.] There is a flaw in your reasoning in that we don’t know the man who first used the name ‘Richards’ was Graham or Strakosch.” [Tr. p. 406.]

Then again

“I am satisfied, Mr. Hankey, that you can’t connect Graham with Richards. I don’t believe that it can be done, except by an inference that would not be a legal inference.” [Tr. p. 406.]

However, Commissioner Head, notwithstanding the comments last hereinbefore quoted, and others, finally decided to recommend to the Secretary of State the extradition of appellee Strakosch. The following chapter of our brief entitled “Doubts of Commissioner Head as to Sufficiency of Evidence to Justify Extradition as Often Expressed by Him During Course of Arguments,” sets forth the many situations, as argument proceeded, in which Commissioner Head expressed his worrying and doubtful viewpoints, to-wit:

Doubts of Commissioner Head as to Sufficiency of Evidence to Justify Extradition, as Often Expressed by Him During Course of Arguments.

By way of illustration we quote from the record the following:

“The Commissioner: [Transcript of Record p. 364] Mr. Dockweiler, I don’t know whether you have ever sat as a committing magistrate or not. You must realize the difficulties we have in determining probable cause.

Mr. Henry Dockweiler: I realize the difficulties, but if there is doubt of probable cause, the doubt must be resolved in favor of the accused. That is why we so often have situations right in our Municipal Courts—

The Commissioner: I don’t know whether you agree, *but I think that if there is doubt, that it probably should be resolved in favor of the state.* (That is—against appellee Strakosch?)

Mr. Hankey: I took this from 7 Cal. Jurisprudence, page 982:

‘The term “reasonable and probable cause” has been defined to mean such a state of facts as would lead a man of ordinary caution and prudence to believe and conscientiously entertain a strong suspicion that the person accused is guilty.’

Mr. Henry Dockweiler: [Tr. p. 365] In other words, you have to present a case which is considered by the committing magistrate to involve probability that the man, if tried, would be convicted. A mere suspicion is not sufficient. Anybody who is linked with someone convicted or accused—

The Commissioner: Probable cause evidently falls between suspicion—

Mr. Henry Dockweiler: (Interrupting) And beyond a reasonable doubt.

The Commissioner: I say, it falls between there. [Tr. p. 366] The thing that bothers me in this case, as I requested you in going over these depositions, my thought was this: *In reading these depositions I have considerable doubt as to whether this defendant has been identified as one of the principals in the case. That is the point.*

Mr. Isidore Dockweiler: Now, there is plenty of evidence against Spiro. All of these depositions seem to be against Spiro.

The Commissioner: [Tr. p. 366] I would have no trouble at all if Spiro were before me.

Mr. Isidore B. Dockweiler: The name 'Strakosch' or 'Graham' appears in just the most incidental fashion, just the references by these stenographers and several others.

The Commissioner: [Tr. p. 366] There is this identification by the rental agent and the stenographers who identify him. *But the question arises in my mind as to whether they have identified him with any of the fraudulent transactions.*

The Commissioner: [Tr. p. 368] (Interrupting) What we have here is the old time bucket shop. That is just what this amounts to. *The only thing I am asking Mr. Hankey is to show me where he has identified this accused with the frauds that are alleged here.*

Mr. Isidore B. Dockweiler: Just think, Your Honor. They have 30 depositions; 30 different witnesses have given their testimony, and just on five pages throughout that whole mass of testimony Strakosch or Graham is referred to, and no connection with the crime.

Mr. Henry Dockweiler: Not one of them had any dealings with him. I am speaking of those who lost money. Not a person.

Mr. Hankey: Now, if the Commissioner has any doubt as to what we would call the elements of a case here that identify him with these crimes, I should like to have the opportunity of clearly going through the evidence.

The Commissioner: [Tr. p. 369] I am familiar with the evidence, but I will confess that I have doubts.

I will say this: That when we receive these documents from English courts, why, we get them in just as good shape as they can be gotten in—much better than we do.

Mr. Isidore Dockweiler: If they had any real evidence against the respondent in this case, Strakosch, it certainly would have been in one or in several—at least in one of the 30 depositions.

The Commissioner: [Tr. p. 369] Well, the rental agent identified him as being associated with Spiro. Association is evidence.

Mr. Isidore Dockweiler: In a case where there is other strong evidence it might be considered, but of and by itself, there would be no justification for the certification to the Secretary of State—

The Commissioner: I know, Mr. Dockweiler, but it is not offered by itself. It is offered in connection with evidence that there are certain frauds here, and association is evidence in this type of case.

Mr. Henry Dockweiler: [Tr. p. 369] I don't think you could jump to the conclusion of association without more than mere, desultory references to the man being in the office; even that he sent letters out, we will say. What letters? They don't say whether

he sent these letters to these particular individuals who were defrauded. There isn't a thing that connects him up with a single one of these 15 (meaning 19)—whatever they are in number—instances of conversion or fraud. [Tr. p. 370.] Suppose he had been connected with a thousand other transactions. You couldn't connect him with these particular 15 (meaning 19), and he wouldn't be answerable for these particular 15 unless you had evidence that connected him up.

Where is the evidence that connects him up with anyone of these?

The Commissioner: [Tr. p. 370] You ask Mr. Hankey that."

* * * * *

"The Commissioner: [Tr. p. 371] I have read these depositions now, and I read them twice; and I have been over portions of them since that time. So I am pretty familiar with the depositions.

The only question in my mind, Mr. Hankey—I say, there is no doubt but what you have identified this accused as Strakosch—the only question in my mind is this: As to whether you have offered sufficient evidence to connect him with any of these fraudulent dealings.

Mr. Hankey: You have to recollect, Your Honor is not trying this case.

The Commissioner: [Tr. p. 371] No; I am not trying the case. I am trying to see if there is probable cause. However, a definite suspicion must be based on some evidence. I am just asking on what evidence you base that suspicion.

Mr. Hankey: We have the evidence that he opened the office at New Broad Street for Maclean & Henderson.

The Commissioner: [Tr. p. 371] That, in itself, is an innocent act.

Mr. Hankey: [Tr. p. 372] That he was there all the time; that he was the man who carried on all the transactions there; that the stenographer, Miss Phillips, said that he attended to everything; not only that he wrote letters from the office at 16 Conduit Street—

The Commissioner: (Interrupting) We don't have those letters.

Mr. Hankey: It is not necessary at this state to produce the actual documents. I mean to say, in testifying on depositions—it isn't necessary in giving depositions in an extradition case to produce all the evidence called for at the trial.

The Commissioner: [Tr. p. 372] You say he may have written letters. Those may have been innocent letters. * * *

Mr. Hankey: I mean, the letters were received and telephone calls were made and testified to by these various people from Maclean & Henderson and Bunt & Co., both of which offices he opened, and at both of which it is testified that he was there all the time, managing the business.

Mr. Henry Dockweiler: Where do we find that he was there all the time, managing the business? I would like to clear that up.

Mr. Isidore Dockweiler: Wouldn't it have been easy, if Strakosch had been involved in this crime, for one of the witnesses to have said, 'Why, I went to such and such an office and was met by a man by the name of Strakosch or Graham or what not, and I talked to him, and he sold me, he induced me, or as the result of representations made by him to me, I turned over such and such shares of such and such a company, which were valuable; and in exchange he

gave me shares in a company, the shares of which were of no value.'

How easy that would be. But evidently that never occurred because out of 30, they would certainly have something.

Mr. Hankey: On page 55, Miss Phillips' evidence: 'I was employed as shorthand-typist by Maclean & Henderson starting in January of 1935. * * * Mr. Graham took me from Suffolk Street to New Broad Street a few days later. No one else was working at Broad Street.'

Mr. Henry Dockweiler: 'She doesn't say that he was working there.'

Mr. Hankey: 'I was working alone for a couple of days at New Broad Street. I was typing out reports on various companies the first two days. Mr. Graham gave me the instructions.'

Then later on down she says that, 'William Underhill dealt with the post unless Alex Graham was there before him; then he dealt with it.'

Then at the bottom: 'Alex Graham used to come to the office at New Broad Street almost every day. Graham dictated all letters as to change of address.'

Over on the next page: 'One of my duties was to attend to the telephone switchboard. Alex Graham used to ask for a line and get his own numbers.'

Mr. Isidore Dockweiler: He may have been telephoning to his girl or to a friend.

The Commissioner: The question I am asking: 'Alex Graham used to come to the office at New Broad Street almost every day. Graham dictated all letters as to change of address.'

Now, is that evidence of a crime?

Mr. Hankey: Together with all the evidence that there was certainly crime perpetrated by people who were connected with Maclean & Henderson.

The Commissioner: There is no doubt about that.

Mr. Hankey: And Graham opened this—or Strakosch opened this office, that he was there conducting this office.

Mr. Finucane: I think the ultimate fact is that all of these bogus shares of stock that were sold were in Strakosch's name, part of the time; and that he was acting as the seller of this stock when he knew at the time it wasn't worth anything. On page 52, the West Africa Company shares were allotted to Graham; and that they were taken out of his name.

Mr. Henry Dockweiler: When and where? At what time?

Mr. Finucane: He must have known about them. He had access to the books.

Mr. Henry Dockweiler: Where does it show that?

Mr. Finucane: Because they are the firm's books, and he was running the firm.

Mr. Henry Dockweiler: Where do you find that in the depositions?

Mr. Finucane: The stenographer.

Mr. Henry Dockweiler: This is what she says: 'Mr. Graham took me from Suffolk Street to New Broad Street a few days later.'

The Commissioner: If you will refer to the end of Engel's deposition, Engel testified that he took care of those transfers. He says: 'I certified the 170,000 shares out of Graham's name. I certified the whole lot. We moved to 28 Martin Lane, after which I did not see Graham. At the moment no expense has been incurred to develop this property in Africa. No one has been employed in Africa.'

That is the Engel deposition; that is on page 52.

Mr. Finucane: It seems to me that there is every bit of evidence in this case except actually that anyone of the customers identified him; but we must remember that a great deal of this conversation and orders testified to here were done over the telephone, and you can say you are anyone over the telephone and there is no one that can contradict your word because they can't see you.

The Commissioner: That is probably an argument Mr. Dockweiler could use.

Mr. Henry Dockweiler: You say that Mr. Mortimer and Mr. Richards were Mr. Strakosch. You admit that there was an Elphinstone and Taylor and Stanley; that they existed, Stanley being Spiro. Mortimer you say you don't know. Richards, you don't know. Royston, you don't know.

Mr. Hankey: We know that Royston was identified as Spiro.

Mr. Henry Dockweiler: I don't know where that occurs, but of the various people you know that certain people existed. I take it that Elphinstone existed. And Taylor, we know that he existed, do we?

Mr. Finucane: Yes; he ran Bunt & Co.

Mr. Henry Dockweiler: You have to have more than that to jump the hurdle that everybody who lost something lost it because Mr. Strakosch represented himself to be Mortimer or Richards or some other man over the telephone.

Mr. Finucane: No, we don't say that. We do say that he was running the Maclean & Henderson office.

The Commissioner: You have pointed to the weakness in counsel's case, and that is the difficulty of identifying Strakosch as participating in any one particular fraud.

Mr. Hankey: Many of the letters were signed with all sorts of odd names.

The Commissioner: That is not before me.

Mr. Hankey: Yes, Your Honor. I can give you the evidence.

The Commissioner: There is evidence of letters being received. But, I say, do you have evidence before me, other than the testimony of the typist, that these letters were signed by him? For example, you have the testimony of the typist to the effect that he signed all letters, but you do not identify any one of those letters.

Mr. Hankey: No; we have no letters. Is that necessary?

Mr. Henry Dockweiler: In that very connection, you have this deposition of Ethel Lowry, who was a typist for Spiro, and she says right at the very end: 'I have seen Stanley Grove Spiro write in various disguises.'

Now, maybe it was this fellow Spiro, who was writing these various letters, talking at the other end of the wire. And it is inconceivable that you could ask, for instance, a court, to jump that hurdle and say, 'Well, everybody that isn't identified might be the accused,' without further ado. That, I think, wouldn't stand up in our courts; and I am sure Great Britain views it the same way. And the protection of the freedom of the accused, unless there is a *prima facie* case made against him, is as sacred in that great country as it is in our own because we are both of the same juridical stock, I might say.

The Commissioner: I might say, if I were in a magistrate's court in London, I would be in the same position as I am in today.

Mr. Hankey: There is one point, if Your Honor please: One of these witnesses didn't get his certifi-

cates of stock which were supposed to have been bought, and for which he received a buying contract. He rang up Maclean & Henderson and spoke to Graham, and Graham said that there was always some difficulty about getting the certificates.

The Commissioner: What proof do you have that it was Graham?

Mr. Hankey: Except that Graham was the man running that office.

The Commissioner: Supposing I call up your office and you answer and say, 'This is David Head.' Is there any way that I have of disproving the fact that you are not David Head?

Mr. Hankey: I am in control of my own office, presumably, and I shouldn't complain if an inquiry was answered by my office; if you are supposing that it was done by my authority, then it would be for me to show that it was not me that gave that authority.

The Commissioner: I think the burden would be on me if I were assuming the affirmative.

Mr. Hankey: Wouldn't you have strong suspicion it was done either by me or under my authority?

The Commissioner: I might have a suspicion. How could I prove it.

Mr. Hankey: I say, I am not required to prove it was actually that man. We are not trying the case.

The Commissioner: No. Say I went into the Superior Court and I testified that I had called your office, and I was unable to identify your voice. I would say that I talked to somebody who said, 'This is Mr. Hankey.' Of course, I do know your voice, but supposing I could not identify you except by simply the statement that you said, 'This is Mr. Hankey.' Mr. Dockweiler made objection to any further testimony, and I probably could not state the conversation. Am I correct, Mr. Dockweiler?

Mr. Henry Dockweiler: Yes.

Mr. Hankey: I think it is quite enough evidence to create a strong suspicion and to put the burden of proof on me to show whether it was me.

The Commissioner: Whether or not it is evidence at all; that is the point.

Mr. Hankey: I submit that it is. It is no good taking one isolated case. You have to consider all of this. I would like to go through carefully through this.

The Commissioner: I think we have argued this just about as far as we can go this afternoon. I will put this over until Monday morning. In the meantime I will read these depositions again.

Mr. Hankey: In the meantime, if you will allow me, I will digest these depositions and point out line by line and page by page exactly how and where I consider this accused connected with these crimes.

The Commissioner: I think I have explained just where my difficulty comes in the matter, and that it is not a question of a crime being committed. That is definite.

Mr. Hankey: It is not a question of his identity, as being Alex Graham or Strakosch?

The Commissioner: That has been established, no doubt.

Mr. Hankey: It is a question whether I can show whether there is such evidence as would lead Your Honor to entertain a strong suspicion that he might have committed these offenses and should be sent to stand trial.

The Commissioner: And the type of evidence that I would hold a man to answer the Grand Jury.

Mr. Henry Dockweiler: In other words, the type of evidence that the D. A. has to put on before the

Municipal Court here upon a preliminary hearing, as we say.

Mr. Hankey: That is right, exactly.

The Commissioner: I think there is no argument about that.

Mr. Isidore Dockweiler: I feel certain that certainly among these 30 respective deponents, that if they had anything against Strakosch, they would have mentioned it, as they certainly did against Spiro. The evidence is as complete as evidence could be showing that Spiro was guilty of conversion and of fraud. If we were defending Spiro, if Mr. Spiro were here, we would have to throw up our hands and say, 'Well, he has got to go to Great Britain.' But to send this boy, take him from here to New York and across the sea, and all that sort of thing, to London, and put him upon trial there on a record that is absolutely defective in each and every respect as regards the tests to be applied—

Mr. Henry Dockweiler: And it runs contrary to not alone our position as a government but the British position itself. Remember, the British have been the sticklers for that since the first treaties were negotiated.

The Commissioner: I would have very little hesitancy about sending him to London. I realize that he would have a fair trial there. There is no doubt about that.

Mr. Henry Dockweiler: But the Treaty gives him the right of probable cause showing at this end.

The Commissioner: And we are going to do our best to see that those rights are preserved.

I would like to read these depositions again, and I will read them between now and Monday morning.

The matter will be adjourned until 2:00 o'clock Monday. That is the 13th."

“The Commissioner: [Tr. p. 403] The particular matter that I called your attention to at the last session was what appeared to me to be the weak part of your case [Tr. p. 404], and that is, that there was very little direct reference to Strakosch in the depositions; and I was asking you to point out to me the direct references.

However, in the meantime I have again re-read the depositions, and have given particular attention to those particular ones referring to Graham, and I believe now that you have a better case. I feel that your case is a better one than I thought it to be.

Mr. Hankey: Not only that, I think I can show Your Honor that Richards, the man who spoke over the telephone so much, was Graham.

The Commissioner: I don't see how you can do that.

Mr. Hankey: I can do that by reference to the times when the telephone calls were made and the records of those telephone calls given in the evidence of the official of the General Post Office in London.

The Commissioner: Yes; I have read those depositions, but what identifies him as Graham? I mean, what identifies Richards as Graham? We know who Graham was.

Mr. Hankey: It is a matter of inference. It is circumstantial evidence, I admit. But we know you cannot speak on the telephone—

The Commissioner: The only thing that I think connects Richards with Graham is the fact he was using an office from which calls were made out under the name of Richards, and I think the testimony [Tr. p. 405] of one or two of the typists, that he used the telephone there.

Mr. Hankey: Yes, and that he got his own line so that they would not know what name he was calling under.

The Commissioner: That is the trouble. They don't know what name he was calling under.

Mr. Hankey: Miss Phillips said he always got his own line, got his own numbers. The way I propose to show that Richards was Graham is this: In four cases we find Richards describing himself as the manager of Maclean & Henderson, ringing up from the office of Maclean & Henderson to these four customers previously to August, 1936, and recommending them to buy Gold Reefs of West Africa. It is the testimony of Miss Phillips that in August, 1936, Graham ceased to come to the office in New Broad Street.

We find in the evidence of those four customers that after he left in August, 1936, Richards, who had previously called them up about Gold Reefs called them up again on dates which they specify, and we find that those dates exactly coincide with dates when those customers were called up from the office in Conduit Street.

Now, we know that Richards was at the office in Conduit Street. It is highly improbable that anybody who had previously used the name 'Richards' would alter that name, or that anybody else would use it to the same customers because they would know the sound of his voice.

The Commissioner: There is a flaw in your reasoning in that we don't know the man who first used the name 'Richards' was Graham or Strakosch.

Mr. Hankey: We know that he was the manager of Maclean & Henderson, and all he did shows that he was the manager. He wrote the letters; he had access to the books; he collected the money; he pledged

the securities. He described himself as the manager. Who else would it likely be? I mean to say, it is a curious coincidence on those exact dates when Richards called up those four customers, after the date when Graham had left Broad Street, all those calls on those identical dates come from Conduit Street.

Mr. Henry Dockweiler: Where does Graham say he is the manager? Where is there evidence that Graham is the only man at this office?

Mr. Hankey: If you will allow me to proceed, I will show you.

The Commissioner: I am satisfied, Mr. Hankey, that you can't connect Graham with Richards. I don't believe that it can be done, except by an inference that would not be a legal inference.

Mr. Henry Dockweiler: Mr. Commissioner, you have an assortment of names; you have Taylor, Mortimer, Richards, Royston, Spiro, Elphinstone, Underhill, Stephens or Stephenson, Klein, Sharp, Keith Lambert, Henderson, and Aprange. Right there you have such an assortment of names that it is only by the purest conjecture that you could ever connect up Graham with any of those names, and that is the fundamental—that shows the obvious weakness in our minds of Mr. Hankey's case—the fact that he has to dodge around from sentence to sentence and try to fill in gaps when there is no connection or specific reference to Graham or Strakosch with any one of these instances of criminal action; not a one.

Mr. Isidore Dockweiler: It would have been so easy, had he been charged at the time, or suspected of criminal action. Why, these witnesses, as they pinned the iniquity of this misconduct upon Spiro, would have been able to have done it as to Graham or Strakosch. The stories are just ordinary stories as you would ex-

pect from a deposition regarding transactions had by the witness with the party involved; and nowhere is Strakosch or Graham connected with the doing of any improper act, any more than by these two stenographers, two women.

Mr. Henry Dockweiler: Under the statute, under the theory that he is an accessory, an accessory is only punishable if knowingly and wilfully he participates. They don't show participation in any one of these transactions, let alone any knowledge on his part that it was wrong.

The Commissioner: The depositions taken as a whole show his participation. Now, for example, I believe the most damaging evidence is that of Engel, which I think you will find on page 51. He says, 'I remember meeting a man named Alex Graham. Hickman introduced me to him. Hickman and Graham met in my presence. Hickman, who was virtually the owner of the company at that time, told me that he was disposing of his block of shares to Mr. Alex Graham, and an agreement was signed by Hickman. This agreement, although dated 30th November 1936, did not come into being until January 1937.'

There is a conflict here in that one of the typists testified that Graham left the country in, I think, August of 1936.

Mr. Finucane: She said he went on a holiday. She didn't say where.

Mr. Henry Dockweiler: He said also that the agreement did not come into being until 1937, and the last charge is 1936.

The Commissioner: However, he says: 'I certified the 170,000 shares out of Graham's name. I certified the whole lot. We moved to 28 Martin Lane, after which I did not see Graham.'

Mr. Hankey: Those are the shares for which nothing was paid.

Mr. Finucane: Other people said they got the shares out of Graham's name prior to that.

The Commissioner: Yes.

Mr. Hankey: Jackson received two certified transfers, one for 3,000 shares and one for 7,000 shares out of the name of Alex Graham.

Mr. Henry Dockweiler: No, he didn't receive them. He declined—he said specifically on page 73—

The Commissioner: This is one of the companies that figures in several of the transactions—West African Mining Corporation.

Mr. Henry Dockweiler: How on earth, by picking out isolated instances—anybody who worked in a store could be picked up—

The Commissioner: There is a good deal more than that, Mr. Dockweiler; in the renting of these offices; it is significant that it was Graham who was usually associated with Spiro in those transactions; and another significant point is that when Spiro left town, that he left orders with the Dunn Trust and with the Conduit Investment—whatever the name of that company is—

Mr. Hankey: Mills Conduit Investment Ltd.

The Commissioner: Mills Conduit Investment Ltd., yes; that he left instructions with them that—

Mr. Henry Dockweiler: (Interrupting) If he wanted any money, to give him credit?

The Commissioner: Not only he, but also Taylor. I say, it would appear—of course, Spiro is undoubtedly, to use the vernacular, the 'ringleader' of this matter. But it would appear that there is a *prima facie* showing here that Taylor and Strakosch were fairly intimately associated with him; and there are so

many of these transactions, and the renting of these offices, as Mr. Hankey states, if it was a legitimate business, they would not have had the need of five offices; and the moving of typists from one office to another, and the use of different addresses, particularly when matters were being sent out, circulars and telephone calls and such, that is, to the same persons in reference to the same transactions; that, of course, looks rather bad, and it seems that in at least three of these offices Graham appeared frequently and transacted a good deal of business in those offices such as writing letters and telephoning. Of course, that does not tie him in with any one of the particular frauds perpetrated; but it seems to me there is a showing that he participated in the general scheme.

Now, this law of aiding and abetting, I don't think we need to argue that because it has been a long time since an aider and abettor has not been a principal both in this jurisdiction and in England. It would be my interpretation of the law, following somewhat our law of mail fraud, that if these gentlemen acted in concert, and after having formed what appears to be a plan here, that they then proceeded to carry it out, Spiro doing one thing, Taylor doing something else, Strakosch opening the mail and telephoning from a particular office, or renting certain offices, it would seem to me that such a showing as that would be sufficient to send the case to the jury.

When we argued this matter the other day I was more impressed with the lack of any direct evidence of contact between Graham and any of the victims; but then in re-reading the depositions for, I think, the third time, I am impressed with this showing of joint acts as between particularly Spiro and Graham or Strakosch. As far as Taylor is concerned I gather that these depositions contain very little evidence

against him inasmuch as he was in the jurisdiction and either went on trial or is to be tried, and these depositions were no doubt drawn with the purpose in mind of offering evidence principally against Spiro and Strakosch.

Mr. Isidore Dockweiler: Your Honor must not permit the impression that any reasonable person would have in reading over these depositions, that a great wrong was done by Spiro. There is no doubt about that. Then, of course, to be influenced, as one naturally might be under the usual conditions without an analysis of the testimony, and feel that—well, this boy, Graham, was running around with Spiro; he certainly must have had something to do with it. And I am afraid that feature has more or less impressed Your Honor.

But I do want to respectfully submit to Your Honor that I can't conceive of the Government of the United States surrendering to the Government of Great Britain for the purpose of trial in London on a grave larceny charge a young man who is 7,000 miles away from London, on the abbreviated, attenuated, and indirect, not direct, testimony in this case. I can't conceive that our State Department will do it.

Why, what is the liberty of a man worth? I am impressed with the fact that this man, Spiro, was as big a crook as could be developed. But this boy, why—suppose there were an application for one of these girls who happened to be visiting Los Angeles or California, one of the stenographers. Why, this boy, apparently, from all I could see, was sort of a messenger boy.

I think that our regard, Your Honor, for the precious character of the liberty of an individual, even though he is not a citizen of our own country, is such that I respectfully submit, Your Honor, that I don't

see how you can make an order recommending to the State Department that this young man be deported on the basis of this evidence because I feel, Your Honor, that if they really had any evidence connecting this boy with any of these transactions that they connect Spiro with definitely and beyond doubt, they would have had it in the depositions. They would have alleged it. There was no restriction upon the witnesses. The witnesses were brought down and they did the best they could, and in a very indirect way referred to Strakosch or Graham.

And I say that there is inadequate connection, Your Honor, and we must insist upon our viewpoint. The Court, of course, does whatever it sees fit; but we want the Court to understand that we are not only very serious about this thing, but that we believe that the record is utterly inefficient, and if this same record was reversed, Mr. Hankey, no extradition would ever be granted by the British authorities to the American authorities. I can say that with the full conviction of the probability of such an action.

Now, Mr. Hankey comes here and does the best he can upon the record, Your Honor; and the British Consul, he has been requested to attend to this matter, and he employs Mr. Hankey, and Mr. Hankey, as the gentleman that he is, and a fine lawyer, he is doing the best he can by, after meticulously examining this record—I will bet Brother Hankey has slept on that record ever since he left here. There isn't any doubt about it because he is loyal to his work. But after the most minute examination, using the most high-powered intellectual glass, he has just picked out here

and there some little incident; and we think that if this boy had been guilty of a crime there, they would say here, 'On such and such day I went up and met Mr. Graham, and he induced me to buy Gold Reefs of West Africa,' or, 'He induced me to change my good stock for shares of Gold Reefs of West Africa, and he represented to me that the stock he was giving me was good, and I find out that it is utterly worthless.' Why couldn't they have testimony like that?

No. I think Mr. Hankey is to be congratulated and complimented upon his fine work. But it is just defective. It can't be done. You haven't got the evidence, Brother Hankey.

Would Your Honor, if you were sitting as a Municipal Judge in this case, on that record bind a man over for trial? I don't think Your Honor would.

The Commissioner: I would, in this jurisdiction, yes.

Mr. Isidore Dockweiler: Then I think it will be tested immediately on a writ of habeas corpus.

In my younger days on a number of occasions I have gone over that whole question as to probable cause—first, that the crime has been committed; and that the probability is that the accused is guilty of the crime. You have got to show those two things. Crimes have been committed here. Now, what is the probability of this young man being connected in any way with the commission of any of the crimes referred to in the depositions?

There isn't anything further that we can say, Your Honor.

The Commissioner: No; I think that everything has been said.

I wish to say this: The case has been ably presented, both on the part of the British Consul and the accused. I don't know of anything further that counsel on either side of the case could have done in presenting the matter to me.

This has not been an easy case. I have given it a good deal of thought in the last few days, and the other day I was extremely hesitant to believe that an order should be made recommending extradition. I have since that time, in re-studying these depositions, come to this conclusion: There seems to be a sufficient concert of action here shown in these depositions between Spiro, whom we all believe to be guilty, and this boy, that shows probable cause; that is, if this were a case, say, involving our mail fraud statute in this country, I believe that I would hold the Defendant to answer, and as I understand the Treaty, if that would be my decision in a case in this jurisdiction, it should govern me in an extradition case.

So I have made up my mind to recommend to the Secretary of State that a warrant of extradition be issued.

Now, gentlemen, how do you wish to proceed in the matter of my report.

Mr. Isidore Dockweiler: We would like the opportunity of examining it, Your Honor. We may take action here, or we may present the matter directly to the State Department, or through the Supreme Court of the District of Columbia.

I want to say, Mr. Hankey, that you are not going to get this boy out of this country on that record; that is, if we can help it."

Commissioner Head's Findings Against Appellee
Strakosch on Each and All of the 19 Counts or
Charges.

The particular attention of the Justices of the Court of Appeals is invited to paragraph XIV of the report of United States Commissioner David B. Head to the Secretary of State of the United States [Tr. p. 12 *et seq.*] and which said paragraph XIV, beginning on page 33 of the transcript, being a part of the Commissioner's findings, reads as follows, to-wit:

“XIV.

“That the said Second Amended Complaint having been regularly brought on for hearing before me, David B. Head, as United States Commissioner for the Southern District of California, Central Division, of the United States of America, specially authorized by order of the District Court of the United States for the said District to perform all the duties of Commissioner under the Extradition laws and Treaties of the United States in said District, and Francis E. Evans, the British Consul representing the Government of Great Britain, being represented by S. T. Hankey and F. J. Finucane, and the said accused being represented by Isidore B. Dockweiler and Henry Dockweiler, on the 7th, 10th, and 13th days of December, 1937, *and it appearing to me as such United States Commissioner from the evidence introduced that there are sufficient grounds to believe that the crimes charged in said Second Amended Complaint had been committed and that said accused is identified as both Alex Graham and Alexander Strakosch, the person charged in the said Second Amended Complaint and that the said Alexander Graham or Alexander Strakosch is guilty of the crimes so alleged and charged in said Second Amended Complaint (that is each and all of the 19 counts and charges) and*

that since the date of the commission of said crimes he had fled into and is now within the Southern District of California, Central Division, in the United States of America and *that all of the facts alleged and charged in said Second Amended Complaint are true and that he should be surrendered to the Government of Great Britain, part of the Domain of His Britannic Majesty for trial for the crimes so charged, and that the crimes alleged and charged in said Second Amended Complaint are embraced in the Treaty for the Extradition of Criminals made between the Government of Great Britain and the United States of America and dated December 22nd, 1931, and proclaimed as law by the President of the United States of America on the 9th day of August, 1932, providing for extradition on account of the crimes or offenses of fraudulent conversion and obtaining money, valuable securities or goods by false pretenses; and therefore I would, and I thereupon did, make a warrant for the commitment of the said Alexander Graham or Alexander Strakosch to the custody of the United States Marshal and each and all of his deputies, and the keeper of the county jail at Los Angeles, California, requiring them and each of them to keep the said Alexander Graham or Alexander Strakosch to await the order of you, the Secretary of State of the United States of America, in this matter.*

That I have annexed thereto, a true copy of said warrant of commitment and made the same a part hereof marked 'Exhibit G,' to be found at pages 65 to 81 of this report:"

and which report is dated the 7th day of January, 1938, and that the final warrant of commitment of appellee Strakosch [Tr. p. 97] appearing as Exhibit "G" of said Commissioner's report repeats in substance the Commissioner's findings.

Habeas Corpus Proceeding and Judge Hollzer's Decision.

Having finally decided to resolve his doubts in favor of Great Britain, in accordance with his biased viewpoint in such a situation, and as expressed by him during the argument of counsel, at his hearing of the case [Tr. p. 364] and as follows, to-wit:

“The Commissioner: I don't know whether you agree, *but I think that if there is doubt, that it probably should be resolved in favor of the state.*”

Commissioner David B. Head prepared, and on January 11, 1938, filed his “Report of United States Commissioner David B. Head to the Secretary of State of the United States of America” [Tr. pp. 12-119] and held and found as follows, to-wit:

“And it appearing to me as such United States Commissioner from the evidence introduced that there are sufficient grounds to believe that the crimes charged in said Second Amended Complaint (that is, each and all nineteen of them) had been committed, and that the said accused is identified as both Alex Graham and Alexander Strakosch, the person charged in the said Second Amended Complaint and that the said Alexander Graham or Alexander Strakosch is guilty of the crimes so alleged and charged in said Second Amended Complaint (that is, each and all nineteen of them) and that since the date of the commission of said crimes, he had fled into (no evidence that Strakosch fled) and is now within the Southern District of California, Central Division, in the United States of America, and that all of the facts, alleged and charged in said Second Amended Complaint, are true and that he should be surrendered to the

Government of Great Britain, part of the Domain of His Britannic Majesty for trial for the crimes so charged (that is, each and all nineteen of them), and that the crimes alleged and charged in said Second Amended Complaint are embraced in the Treaty for the Extradition of Criminals made between the Government of Great Britain and the United States of America and dated December 22nd, 1931, and proclaimed as law by the President of the United States of America on the 9th day of August, 1932, providing for extradition on account of the crimes or offenses of fraudulent conversion and obtaining money, valuable securities or goods by false pretenses; and therefore I would, and I thereupon did, make a warrant for the commitment of the said Alexander Graham or Alexander Strakosch to the custody of the United States Marshal and each and all of his deputies and the keeper of the county jail at Los Angeles, California, requiring them and each of them to keep the said Alexander Graham or Alexander Strakosch to await the order of you, the Secretary of State of the United States of America, in this matter.”

Thereupon and on January 8, 1938, appellee Alexander Strakosch filed his verified petition for a writ of habeas corpus in the District Court of the United States in and for the Southern District of California, Central Division, and said petition having been thereupon assigned to the department of said District Court presided over by the Honorable Harry A. Hollzer, judge of said Court [Tr. p. 4 *et seq.*], said judge made an order directing that the

writ of habeas corpus, as prayed for, issue, returnable before said Court on January 14, 1938, at ten o'clock A. M. thereof.

Thereupon and on January 8, 1938, said writ did issue directed to Robert Clark, United States Marshal of the Southern District of California, who, on January 11, 1938, filed his return to said writ.

Thereafter on January 14, 1938, said District Court, Honorable Harry A. Hollzer, judge presiding, commenced the hearing and trial upon said writ, and petition therefor, return of said marshal thereto, etc., and which trial and hearing occupied several days thereafter, and all of the evidence submitted to Commissioner Head, and all of the record made before said Commissioner, having also been presented, and the cause having been extensively argued by counsel representing the British Government and by counsel representing appellee Strakosch, the matter was submitted for the Court's decision; and thereafter, and on March 18, 1938, the Honorable Harry A. Hollzer, presiding judge of said District Court, filed therein his memorandum of conclusions and caused to be entered the following order [Tr. p. 170]:

“The Court having this day filed its memorandum of conclusions herein,

It Is Ordered, for the reasons set forth in said memorandum that petitioner be discharged under the writ of habeas corpus granted herein.

An exception is allowed to respondent.”

For convenience sake, Judge Hollzer's decision is attached to this brief as Appendix A thereof. Said decision commences on page 126 and ends on page 170 of the transcript of record herein.

Judge Hollzer most carefully and meticulously examined each and every allegation in the British Government's second amended complaint, and all of the evidence set forth in each and every one of the aforesaid thirty depositions, and his memorandum of conclusions occupy 45 pages of the transcript of record herein. After analyzing in all possible detail the evidence of each of the nine witnesses claimed to have been defrauded, and all other evidence in the record before him, Judge Hollzer concluded, as to each of said nine defrauded witnesses, that at no time did petitioner (Strakosch) directly or indirectly make any representations to any of said nine injured witnesses, or deal with them, except as mentioned in the Court's decision, and then concluded as follows [Tr. pp. 167-169]:

“The Court Further Concludes that petitioner did not at any time own, also that he did not at any time represent himself as owning, and that he was not at any time held out as owning, any interest either in the firm of Maclean & Henderson or the firm of S. R. Bunt & Co., also that he was not the manager of either of said firms, also that he did not represent either of said firms in any of the transactions relating to the deposit, with either of said firms, of any of the securities or any of the checks or funds by any of the persons mentioned in said second amended complaint,

also that he did not receive any of the securities or any of the checks or funds deposited with either of said firms, as alleged in said second amended complaint, and also that he did not represent either of said firms in any of the transactions upon which any of the offenses described in said second amended complaint are based.

The Court Further Concludes that the evidence presented before the Commissioner was insufficient to justify a finding to the effect that there was a probability that any one of the specific crimes described in said second amended complaint had been directly committed by the petitioner or that he had directly participated in the commission of the same; also that such evidence was insufficient to justify a finding to the effect that petitioner had not merely aided in the commission of any one of the specific crimes, described in said second amended complaint, but also had had knowledge of the wrongful purpose of any of the persons engaged in the perpetration of any one of said specific crimes and had counseled and had encouraged such person in the commission thereof; also that such evidence was insufficient to justify a finding to the effect that a person of ordinary caution and prudence would believe and conscientiously entertain a strong suspicion that the petitioner was guilty of any one of the specific crimes described in said second amended complaint; also that such evidence was insufficient to justify a finding to the effect that there was reasonable ground to believe that any one of the specific crimes described in said second

amended complaint had been committed by petitioner or that he had aided and abetted in the commission thereof; also that if such evidence had been presented at a preliminary examination before a committing magistrate in the State of California, for the purpose of determining whether a case was thereby made out which would justify holding the petitioner for trial in the superior court of said state upon any of the specific crimes described in said second amended complaint, the same would have been insufficient to justify holding him for trial; and also that the Commissioner did not have before him competent legal evidence on which to exercise his judgment as to whether the facts were sufficient to establish the criminality of petitioner with respect to any of said crimes, for the purposes of extradition.

The Court Therefore Concludes that petitioner is entitled to his discharge under the writ of habeas corpus. See:

In re Luis Orteiza y. Cortes, 136 U. S. 330, 334, 335;

Charlton v. Kelly, 229 U. S. 447, 456;

Hatfield v. Guay, 87 F. (2d) 358, 361, 362, 364;

Curreri v. Vice, 77 F. (2d) 130, 131, 132;

People v. Terman, 40 Pac. (2d) 915, 916.

(Endorsed): Filed Mar. 18, 1938. (138)''

In fact, the writer hereof believes that Judge Hollzer's elaborate opinion alone, is in and by itself, a complete answering brief on behalf of appellee Strakosch.

Alleged Evidence Claimed by British Government to Be Against Appellee Strakosch.

Before noting the alleged evidence claimed by the British Government to sustain the charges against the accused, appellee Strakosch, it is, of course, necessary to keep in mind the nature of the charges against Strakosch and which appear in paragraphs VII, VIII and VIII-A of the British Government's Second Amended Complaint. [Tr. pp. 73, 74, 75, *et seq.*]

Paragraph VII reads as follows, to-wit:

“That the said accused Alex Graham (otherwise Strakosch) is accused of the following crimes and offences, to-wit:

1. Fraudulent conversion.
2. Obtaining money, valuable securities or goods by false pretenses.

That the crimes and offences were committed within the territory of His *Brittanic* Majesty, to-wit: in Great Britain at various times and places between the dates of February 7th, 1935 and the 2nd day of February, 1937, both inclusive.”

Paragraph VIII reads as follows, to-wit:

“That it further appears *from the said depositions* as follows:

“That the general scheme of the frauds perpetrated by the accused and his associates was as follows:

“That the *accused* and his associates *purchased* the business, good-will and name of reputable outside stockbrokers, being firms which had been established over a number of years and which had a number of clients who had done business with them satisfac-

torily in the past and had full confidence in them. The names of the two said firms which they had purchased are Maclean & Henderson of Stirling, Scotland, and S. R. Bunt & Co., of London, England. Having acquired the above mentioned businesses, *they proceeded* to communicate by letter or telephone and circular with the old clients of the said two firms. *They advised* the said clients to purchase stocks which were substantial and well recognized stocks and having obtained money or stocks to convert into money from the said clients for the purpose of purchasing such stocks, *they would then advise them to change over* from the stocks first recommended and purchase stocks in companies which were merely paper companies set up for the purposes of the frauds *which were subsequently perpetrated by the accused* and his associates, which companies had practically no assets and the shares in which were valueless, to the knowledge of the accused and his associates; *falsely representing* to the said clients that they honestly believed that said stocks so recommended by them to be purchased by the said clients were valuable, well-recognized stocks and good and sound investments, well knowing to the contrary that they were absolutely valueless.

“That the *accused* and his associates would then keep the money and stocks sent to them as aforesaid by the said clients and *convert same to their own use*. That said clients never received any consideration for the money and stocks turned over to said accused and his associates.”

Paragraph VIII-A reads as follows, to-wit:

“That it appears from the said depositions that the particulars of the crimes and offences against the

said Larceny Act 1916 of Great Britain committed by the said accused are as follows:”

Then follow the particulars of such alleged crimes and alleged offenses under subheads (a), (b), (c-1), (c-2), (d), (e), (f), (g-1), (g-2), (g-3), (h), (j-1), (j-2), (j-3), (k-1), (k-2), (k-3), (l-1) and (l-2).

Now, what is the evidence claimed by the British Government supporting the aforesaid charges?

In the thirty *ex parte* affidavits or depositions put in evidence by the British Government, as already noted herein, the names “Strakosch” and “Graham” appear only in *eighteen* of such *thirty* affidavits or depositions.

Appellee Strakosch insists that such *eighteen* affidavits, either singly or as a whole, do not justify the conclusion that there is sufficient cause to believe him (Strakosch) guilty of any of the eleven (11) offenses charged in the English warrant of arrest or of any of the nineteen (19) offenses charged in the second amended complaint herein, *and Judge Hollzer so held.*

John Henry Turner, Frank Plater, John Cooper Russell, and William Fothergill, four of the witnesses claimed to have been defrauded, did not even mention, in their respective *ex parte* affidavits, either the name of “Strakosch” or that of “Graham.” However, the remaining five of those nine alleged to have been defrauded did, but only in a casual, ineffective, irrelevant, immaterial manner. Their names are Reginald Harry East, Peter Daniel, William Scott, Francis Jackson, and Charles Henry Row.

Following is the testimony of each one of said five upon the subject of the alleged criminality of appellee Strakosch, to-wit:

REGINALD HARRY EAST [Tr. p. 195]:

“This cheque I never received, and I am informed and believe that the firm of S. R. Bunt & Co. was another firm controlled by Stanley Grove Spiro, through one Samuel Taylor, who was a close associate of Spiro’s, and who is now being prosecuted for conspiracy with Spiro, Strakosch, and others to defraud the clients of Maclean & Henderson.”

Comment:

East dealt with Royston, and Stanley Grove Spiro, but *never* with *Strakosch*, and the East reference to “Strakosch,” as being one of those being prosecuted, is simply hearsay, immaterial and utterly irrelevant.

PETER DANIEL [Tr. p. 199]:

“In the course of my dealings with Spiro he told me that if I rang up Maclean & Henderson and was unable to get in touch with him I was to ask for a Mr. Graham, and to deal with no one else. Mr. Graham is I verily believe Strakosch. Early in the month of December 1935 having received none of the certificates which I had been expecting, I rang up Maclean & Henderson and spoke to the said Graham. He made an excuse that the certificates were often held up, and I subsequently wrote to the firm but was unable to obtain any explanation or satisfaction. I subsequently obtained a judgment for £10,551 but have received only £500 out of that amount.”

Comment:

All of Daniel’s transactions had been with Royston or Stanley Grove Spiro, *and not with Graham or Strakosch*,

and all of Daniel's transactions with Spiro had occurred in July, August, and October, 1935, and long before he (Daniel) telephoned in December, 1935, to Maclean & Henderson and "*spoke to the said Graham.*" Then again Daniel failed to state the name of the party or parties against whom he obtained judgment for £10,551. We certainly can conclude, in view of Daniel's silence, that appellee Strakosch (or Graham) was not one of his judgment debtors, and that when the suit to obtain such judgment was filed, neither Daniel, nor his solicitor or attorney, considered Strakosch or Graham liable in any manner whatsoever.

WILLIAM SCOTT (Dental Surgeon) [Tr. p. 205]:

"I am now informed and believe that West African Mining Corporation shares are valueless and the transfer which I can produce shows that I received 3,000 shares in this concern out of the name of Alexander Graham who I verily believe to be Strakosch. This transfer was not sent to me until 28th January 1937 and on advice I refrained from signing it."

Comment:

In other words, Scott did not accept the transfer of said 3,000 shares. Scott did business with Maclean and Henderson, through Richards and Stanley (Stanley Grove Spiro), but not with Strakosch or Graham. On September 7, 1936, Richards telephoned him and urged him to take up a further 3000 Gold Reefs of West Africa shares. He received a contract note for purchase of a further 1000 Gold Reefs of West Africa shares but he returned the note as he did not want to go on with the transaction. About a month later on the telephonic urging

of Richards, Scott bought a further 1060 shares. On November 13, 1936, Scott received a phone call from Richards stating that another concern called West African Mining Corporation [Tr. p. 207] had acquired control of Gold Reefs of West Africa on a share for share purchase. He suggested that Scott should transfer his Gold Reefs of West Africa shares to West African Mining Corporation shares. This Scott agreed to do and received two contract notes covering the transaction. Scott received 3000 shares [Tr. p. 208] of West African Mining Corporation shares out of the name of Alexander Graham, but Scott did not, on advice sign the transfer. But it must be remembered that Lillian May Phillips swore that "Alex Graham ceased to come about August 1936. He went away on a holiday. I did not see him after."

FRANCIS JACKSON (Butcher) [Tr. p. 240]:

"I did not receive certificates for either my 3,000 or my 7,000 purchase of these shares, but received a letter dated 1st February 1937 enclosing two certified transfers, one for 3,000 shares and for 7,000 shares out of the name of Alex Graham.

I am now informed and believe that these shares are worthless and that the said Alex Graham is Strakosch, a close associate of Stanley Grove Spiro. *I am further informed and believe* that the activities of S. R. Bunt & Co. were controlled by Stanley Grove Spiro through one Samuel Taylor."

Comment:

Jackson did business with S. R. Bunt & Co. through Stanley and Mortimer. On November 4, 1936, he purchased, through Mortimer, 3000 West African Mining Corporation shares. Later he agreed with Mortimer to

purchase a further 7000 shares. Afterwards Jackson received a letter dated February 1, 1937, enclosing transfers for 3000 and 7000 shares out of the name of Alex Graham. But witness Lillian May Phillips testified that Alex Graham ceased to come about August, 1936—that he went away—that she did not see him after.

CHARLES HENRY ROW (Insurance Broker) [Tr. p. 242; see pp. 243-244]:

“After some correspondence about these shares, I called at the office of S. R. Bunt & Co. on 22nd January 1937 and saw a man named Keith Lambert, and informed him that I wished to sell my shares. He told me that Samuel Taylor, whose name appeared on the notepaper of S. R. Bunt & Co. at the time of my first purchase of Gold Reef shares, was ill, and that Mortimer was still with the firm.

I received a transfer for the 1,000 shares in the West African Mining Corporation Ltd. *out of the name of Alex Graham, his signature being witnessed* by someone giving the address No. 36, Old Broad Street, E. C.

S. R. Bunt & Co. never sold my shares in the West African Mining Corporation, and when I wrote a letter to them on 16th February 1937 it was returned through the Dead Letter Office.”

Comment:

Row dealt with the firm of S. R. Bunt & Co. through Mortimer. He spoke to Keith Lambert at the company office January 22, 1937, who told him that Samuel Taylor, whose name appeared on the note paper of S. R. Bunt & Co., at the time of his first purchase of Gold Reef

shares, was ill, and that Mortimer was still with the firm. At no time does Row claim "Strakosch" or "Graham" contacted him, directly or indirectly. Row's purchases occurred October 20th, 1936, and November 9th, 1936. May Lillian Phillips [Tr. p. 223], shorthand typist, testified that she went to S. R. Bunt & Co. in April, 1936, and that "Alex Graham ceased to come about August 1936. He went away on a holiday. I did not see him after." In other words, Strakosch (or Graham) according to Miss Phillips, was no longer even a messenger or office boy at the Bunt office after August, 1936. In November, 1936, when Row claims he purchased through Mortimer, 1000 shares of West African Mining Corporation, transfer of which, he claims, came out of the name of Alex Graham, whose signature was witnessed by some one giving the address No. 36, Old Broad Street, E. C. [Tr. p. 244.] Row's testimony as to *Graham's signature* was hearsay, and incompetent as proof that "Graham" executed such document. The name of the witness to such alleged signature of Graham is not given.

It will be observed that the reader of said eighteen (18) depositions frequently comes across such phrases as "*I am now informed and believe*" and "*I am further informed and believe,*" etc. [See depositions of Reginald Harry East, Tr. p. 197—William Scott, Tr. p. 208—John Cooper Russell, Tr. p. 210—William Fothergill, Tr. p. 214—Francis Jackson, Tr. p. 242—Charles Henry Row, Tr. p. 244.]

Following is digest of testimony of witnesses not defrauded and in whose testimony the names "Strakosch" and "Graham" also casually appear.

LUIS SANCHA (Company Director) [Tr. pp. 183-184]:

“I am a Director of Bilbao House Ltd., of Bilbao House, 36, New Broad Street, London, E. C. 2.

In December, 1934, we let three rooms to Maclean & Henderson at 36, New Broad Street. The first person I saw was a Mr. Graham. He came with a man named Stanley. I saw Elphinstone later on. I think Elphinstone said he was the proprietor of the business. Maclean & Henderson became tenants on 24th December, 1934. The rent was £400. It was paid at the beginning. Later I had to press for it. It was always paid by cheque. We put the bailiff in.”

Comment:

It is quite obvious, that from time to time Stanley Grove Spiro and others used appellee Strakosch as an office or messenger boy.

Sancha's testimony discloses that Elphinstone was the proprietor of the business of Maclean and Henderson. Affiant does not claim that “Graham” made any representations respecting himself, or that he paid the rent, or acted as a partner of the new tenant, Maclean & Henderson, or otherwise. Where the criminality?

LEONARD PETER DARSLEY (Official in Registry of Companies) [Tr. pp. 186-188]:

“The first allotment (of ‘Scottish Gas Utilities Corporation Ltd.’) shows those 70,000 (shares) allotted to various names including . . . Alexander Strakosch 7000.”

Comment:

The Darsley deposition is interesting in that it gives details of the file of the Anglo African Corporation Ltd. and of the file of the Scottish Gas Utilities Corporation Ltd., and certain of the activities of the said last named company, and of the file of Gold Reefs of West Africa Ltd., and some of its activities, and of the file of the West African Mining Corporation, and some of its activities.

A number of names are mentioned in connection with said four corporations but only in one place does the name of Alexander Strakosch appear as above stated in line 13 of page 188 of the transcript. Was Alexander Strakosch a real shareholder or was his name used as a “dummy”? In the Darsley deposition the name of Alexander Strakosch is solely shown as a shareholder of the Scottish Gas Utilities Corporation, Ltd. Wherein the criminality?

FRANCIS JOSEPH MILDNER (Printer) [Tr. p. 191]:

“I am a printer. . . . In 1934 I was introduced by Mr. A. F. Martin to a man named Graham. As a result I called on Mr. Graham at the office of Maclean & Henderson. . . . He gave me an order for printing on behalf of the firm of Maclean & Henderson. The first order was about the end of 1934. From that time onwards I did a considerable amount of printing for Maclean & Henderson. . . . As a rule Graham paid me in notes (currency) at my request.”

Comment:

The witness states that “Graham” gave him an order for *printing*, but neglects to state *what* was printed. We are left wondering what was the nature of the printing,

except that, further on in his deposition, he states that the printing included the "Weekly Financial Review", copies of which came by post. Who prepared such copy was not stated. Several people gave him orders. He printed reports on various companies from time to time, but fails to state the names of the companies or what he printed about any of them. Witness stated that *as a rule* Graham paid him in notes at his request but did appellee Strakosch do anything other than function in this situation as a mere clerk? Wherein the criminality?

CHARLES WALTER ENGEL (Company Secretary) [Tr. p. 218]:

"I am a company secretary. . . . I remember meeting a man named Alex Graham. Hickman introduced me to him. Hickman and Graham met in my presence. *Hickman who was virtually the owner of the company at that time told me that he was disposing of his block of shares to Mr. Alex Graham and an agreement was signed by Hickman.* This agreement although dated 30th November 1936 did not come into being until January 1937. Hickman *told me that Graham had said he would supply sufficient funds to work the company.* Graham gave me instructions to get new offices and I found some which were not suitable. Graham said he had found some and we moved to 7 Gresham Street, E. C. I saw no money pass between Graham and Hickman. . . .

"Mr. Scully and Mr. King resigned as directors on 21st January when Graham took over. . . .

"I saw Graham on 4th February 1937, that was the last occasion. I do not know where he is now. I do not know him by any other name. I have seen a photograph and I identified the photograph marked 2 as the photograph of Graham.

“I certified the 170,000 shares out of Graham’s name. . . . We moved to 28 Martin Lane, after which I did not see Graham. . . .”

Comment:

Engel, in his deposition [Tr. pp. 218-219-220], states that *on November 17th, 1936*, he was engaged as a book-keeper by John Martin of the firm of Martin, Dale and Forsythe and that he acted as Registrar of Gold Reefs of West Africa Ltd., and was so employed “for a matter of a *few* months.” Engel called on several occasions to see the Secretary (no name stated) of the West African Mining Corporation Ltd. Subsequently he acted as Secretary of that company and then added “and I still am the Secretary” (that is September 6, 1937, when Engel swore to his deposition [Tr. p. 257]). That he knew of the agreement between Dove and Bukasu, Ltd. The 170,000 shares were transferred to Mr. Hickman. That he had no idea “where Hickman is”. That he last saw him at the end of 1936 in this country (England). That he allotted the shares to Hickman. That he was appointed (as Secretary) about the end of November, 1936. That he left Martin, Dale & Forsythe early in January, 1937. As above quoted, he remembered meeting a man named Alex Graham but he does not fix the approximate date. Hickman introduced Engel to Graham and Hickman told Engel that he was disposing of his block of shares (170,000) in the West African Mining Corporation to Alex Graham and an agreement was signed by Hickman (but apparently not signed by Graham). “This agreement although dated the 30th November 1936 did not come into being until January 1937. Hickman told me (hearsay?) that Graham *had said* he would supply suffi-

cient funds to work the Company” but later on Engel added “I saw no money pass between Graham and Hickman.”

Engel also stated “I saw Graham on 4th February 1937, that was the last occasion. I do not know where he is now”. Engel *did not state where* on February 4, 1937, he saw Graham, whether in England or France or Germany or where.

Engel then testified [Tr. p. 220]:

“I certified the 170,000 shares out of Graham’s name. I certified the whole lot. We moved to 28 Martin Lane, after which I did not see Graham.”

Who directed Engel to certify the 170,000 shares out of Graham’s name? And how was the transfer made? In what lots? And when was the transfer made? And to whom was the transfer made? Or, if in more than one certificate, how many certificate issues were there to absorb the whole lot of 170,000 shares?

As hereinbefore set forth, Engel testified that the agreement signed by Hickman and dated November 30, 1936, was not to come into being until January, 1937, and that he last saw Graham on February 4, 1937, and that he saw no money pass between Graham and Hickman. At this point we may inquire as to when the 170,000 shares were transferred from Hickman to Graham. It is assumed that the agreement referred to was an agreement providing for the sale by Hickman to Graham and the purchase by Graham from Hickman of the 170,000 Hickman shares for some expressed consideration. What the terms of such agreement were is not revealed by witness Engel at

all. Certainly, his affidavit should have disclosed the date of certification of the Hickman shares to Graham and the date or dates of the certification of such shares from out of Graham's name and to whom, and when this was done and if such transfer was done at the request of Graham and whether the signature of Graham was attached to each transfer of shares certificate.

It will be remembered that Commissioner Head placed his greatest reliance upon the Engel deposition when he concluded to hold appellee Strakosch for extradition. [Tr. bottom of p. 407.] But in what manner does the Engel deposition tend to prove that appellee Strakosch was guilty of the crimes and offenses set forth in paragraph VII of the British Government's second amended complaint herein, and in what particular does the Engel deposition support any of the charges contained in paragraph VIII of said second amended complaint. What evidence is there, either in Engel's deposition, or in any other deposition, that the accused Strakosch "purchased the business, good-will and name of reputable outside stock-brokers, being firms which had been established over a number of years and which had a number of clients who had done business with them satisfactorily in the past and had full confidence in them." Or that "The names of the two said firms which they (that is, Strakosch and his Associates) had purchased are Maclean & Henderson of Stirling, Scotland, and S. R. Bunt & Co., of London, England" or that "Having acquired the above mentioned businesses they (that is, Strakosch and his associates) proceeded to communicate by letter or telephone and circular with the old clients of the said two firms" or that "they (that is Strakosch and

associates) advised the said clients to purchase stocks which were substantial and well recognized stocks and having obtained money or stocks to convert into money from the said clients for the purpose of purchasing such stocks they (that is, Strakosch and his associates) would then advise them to change over from the stocks first recommended, and purchase stocks in companies which were merely paper companies set up for the purposes of the frauds which were subsequently perpetrated by the accused (Strakosch) and his associates, which companies had practically no assets and the shares in which were valueless, to the knowledge of the accused (Strakosch) and his associates; falsely representing to the said clients that they honestly believed that said stocks so recommended by them to be purchased by the said clients were valuable, well-recognized stocks and good and sound investments, well knowing to the contrary that they were absolutely valueless." Or "That the accused (Strakosch) and his associates would then keep the money and stocks sent to them as aforesaid by the said clients and convert same to their own use."

The record shows that there is no competent evidence proving or tending to prove that Strakosch had any right, title or interest in the businesses of either Maclean & Henderson or S. R. Bunt & Co. or that Strakosch in any manner whatsoever had participated in communicating by letter or telephone or circular with any of the old clients of said two firms, or that he (Strakosch) advised the said clients, or any of them, to purchase stocks, or otherwise, as alleged either generally in said paragraphs VII and VIII, or specially in said paragraph VIII-A of said second amended complaint.

MAY LILIAN PHILLIPS (Shorthand-typist) [Tr. p. 222]:

“I was employed as shorthand-typist by Maclean & Henderson starting in January 1935. In order to get that position (with Maclean & Henderson) *I had to see a Mr. Klein*. Mr. Graham took me from Suffolk Street to New Broad Street a few days later. . . . I was typing out reports on various companies (What companies?) the first two days. Mr. Graham gave me the instructions. . . .” (What kind of instructions?)

“William Underhill dealt with the post (mail) unless Alex Graham was there before him then he dealt with it. . . .”

“Alex Graham used to come to the office at New Broad Street almost every day. Graham dictated all letters as to change of address.” (What address?)

“One of my duties was to attend to the telephone switchboard. Alex Graham used to ask for a line and get his own numbers. . . .” (What or whose numbers?)

“In April, 1936, I was taken by Alex Graham to S. R. Bunt & Co. 1 Royal Exchange Avenue, E. C. Alex Graham called William Underhill and me into an inner office and Alex Graham told William Underhill that I was going to work in S. R. Bunt & Co. and off we went. Alex Graham gave me orders at S. R. Bunt & Co. (What kind of orders?) Alex Graham opened the letters, and gave me some. I did not have all. Others he took away. *Alex Graham ceased to come about August, 1936*. He went away on holiday. *I did not see him after*. When he had gone someone called for the correspondence. . . .”

“I was told by either Samuel Taylor or Alex Graham, I can’t remember who, about Hawker Aircraft shares. . . .

“Alex Graham told me to go to an office in King William Street. . . . The name of the firm was Irving & Co. . . .

“. . . The photograph *Exhibit No. 2* is the photograph of the man I knew as Alex Graham.”

Comment:

If appellee Strakosch was, as contended by the British Government, the Poo Bah of Maclean & Henderson, or acting as such, why did May Lillian Phillips who sought a job with that firm testify that “*in order to get that position I went for an interview to 5 Suffolk Street. I had to see a Mr. Klein.*”

But apparently, after being hired by Mr. Klein, on behalf of Maclean & Henderson in January, 1935, the role of messenger boy or clerk was assayed by appellee Strakosch, for she then proceeds to state that—

“Mr. Graham took me from Suffolk Street to New Broad Street a few days later.”

She also testified that

“William Underhill came to work at New Broad Street. He was afterwards manager. So far as I could tell William Underhill was above me *and there was no one else in the office.* I took instructions from William Underhill.”

Again, obviously, appellee Strakosch held no executive or responsible or important position with said firm of Maclean & Henderson.

Witness Phillips also testified [Tr. p. 223] that “William Underhill and Green kept the books.”

Apparently witness Phillips from January 1935 to April 1936 was employed as shorthand-typist for Maclean & Henderson, and then from April 1936 to the beginning [Tr. p. 224] of November 1936 was so employed by S. R. Bunt & Co. She was succeeded by Miss Croucher. Samuel Taylor’s name was on the letter heading of S. R. Bunt & Co. Witness Phillips also testified “I drew a wages cheque for myself, commissionaire and petty cash. Cheques were already signed S. R. Bunt & Co. in Samuel Taylor’s handwriting.” She also testified “Alex Graham ceased to come about August 1936. He went away on holiday. I did not see him after.”

RUBY ISABEL CROUCHER (Typist) [Tr. p. 225]:

“I am a typist. . . . *I entered the employment of Stanley Grove Spiro in January 1936. . . . I worked at that address (5 Suffolk Street) for both companies, Scottish Gas Utilities Corporation Ltd. and the Anglo-African Corporation Ltd. The staff when I began to work there consisted of Miss Brabyn, Mrs. Lowry, Mr. Taylor and Mr. Graham. (I have heard Graham called Strakosch), (What position on the staff did Graham hold? His duties?) Mr. Sharp, myself and a housekeeper. I took my instructions mainly from Stanley Grove Spiro. In Spiro’s absence I took instructions from Samuel Taylor. Taylor was Secretary of one company. Graham (otherwise Strakosch) gave me instructions with reference to the firm of Maclean & Henderson. . . . (What kind of instructions?)*

“Stanley Grove Spiro dictated letters to me with regard to Maclean & Henderson, so did Graham

(otherwise Strakosch), (What kind of letters and to whom?), not Taylor so far as I remember. . . . I mentioned to Graham (otherwise Strakosch) when Maclean & Henderson's paper was running short and I got more. . . . (What kind of paper did witness refer to—letter heads or typewriting paper or both?)

“Stanley Grove Spiro sometimes dictated letters with reference to this concern (S. R. Bunt & Co.) and also Graham (otherwise Strakosch). (What did Graham write? And to whom?) When stationery was required for that company I may have mentioned it to Graham or Taylor. When I asked for it I got it.

“Samuel Taylor dictated letters for the Scottish Gas Utilities Corporation Ltd. He dictated them solely so far as I remember. Anglo African Corporation Ltd. did no business at all while I was there.

“I went to Bilbao House, 36 New Broad Street, E. C. . . . for some days to assist in preparing a list of telephone numbers. When I got there I saw William Underhill. The list was prepared, names and addresses, and we had to add the telephone numbers. [Tr. p. 226.]

“I saw John William Robert Elphinstone at 5 Suffolk Street. He used to just come in and out. . . . William Underhill came to 5 Suffolk Street, very, very seldom. I saw him there. He came to see Stanley Grove Spiro.” [Tr. p. 227.]

“Stanley Grove Spiro asked me to go and be a typist at S. R. Bunt & Co. This was early in November 1936. Miss Phillips and a commissionaire was there when I got there. Miss Phillips left after two or three days. I was the only person there with the commissionaire for a few days. . . . I was there three weeks. *Alex Graham never came*” [Tr.

p. 227] “Keith Lambert came. *Keith Lambert was running S. R. Bunt & Co.* I never opened letters after he came. . . . I left on 5th December 1936. I gave a week’s notice to leave S. R. Bunt & Co. to Stanley Grove Spiro.”

Comment:

In addition to the interpolation of questions, as the witness’ narrative proceeded, attention is called to the fact that while Miss Croucher, successor of Miss Phillips, was at the S. R. Bunt & Co. office, for the three weeks, Alex Graham never came there; and that Stanley Grove Spiro asked her to go and be a typist at S. R. Bunt & Co. and that Keith Lambert was running S. R. Bunt & Co. Obviously, so far as Miss Croucher was concerned Alex Graham was not a person of any importance or consequence in either organization—Maclean & Henderson or S. R. Bunt & Co.—certainly not an owner of any interest or partner, or responsible executive, or manager, or anything but an humble clerk or messenger boy, and most certainly, not a person of any financial means.

ROSE KATHLEEN WATSON (Shorthand-typist) [Tr. p. 227]:

“I was employed as a shorthand typist by Stanley Grove Spiro in May 1936. . . . Miss Brabyn took me to 16 Conduit Street. . . . I stayed there about one week. I had not much to do. . . . Alex Graham paid me my wages. He had been there at Conduit Street before he paid me.” [Tr. p. 228.]

“I was sent at the end of the week to Bilbao House, 36 New Broad Street, E. C. Stanley Grove Spiro told me to go there on the telephone on the Monday morning. Alex Graham took me there. This was still in

May 1936. When I arrived at New Broad Street I was introduced to William Underhill, who I understood was the Manager. From that time until January 1937 I remained in the employ of Maclean & Henderson at 36 New Broad Street." [Tr. p. 228.]

"Until William Underhill left 36 New Broad Street he was the person who usually gave me instructions. I typed letters on his instructions, some of them dealt with Gold Reefs of West Africa shares. William Underhill signed the cheques and endorsed them as a rule. William Underhill attended to the post until he left, then Mr. Green." [Tr. p. 228.]

"Alex Graham came to the office quite frequently. . . . I saw Samuel Taylor at the office. I think once or twice, with Alex Graham. I have never heard of Mr. Simpson. I have heard of Mr. Richards in consequence of someone ringing on the telephone. I never saw Mr. Richards. I saw a Mr. Henderson, he came later on. I knew a Mr. Lambert. I knew him in no other name. He came and spoke to Green after William Underhill had left.

"If anyone rang up William Underhill would speak to them, then latterly Green would speak to them. Telephone calls came from 5 Suffolk Street quite frequently. I typed letters relating to West African Mining Corporation, but I do not know if any one was sent. I think William Underhill told me to type them just before he left. I never sent any off. I saw Mr. Sydney, he used to call. An envelope was prepared by either William Underhill or Green for Sydney to take away." [Tr. p. 229.]

"In January 1937 I was told to go and see Miss Brabyn.

"As a result of what she said, I went to 7 Gresham Street. I went early in February 1937. I worked

at 7 Gresham Street under the direction of Mr. Engel. The offices were those of the West African Mining Corporation. I had seen Mr. Engel previously at the offices of Gold Reefs of West Africa Ltd. at 22 Basinghall Street. Sydney called at Gresham Street with Mr. Lambert and Mr. Green, and then we moved to 22 Martin Lane about a week after. I was only there two or three days." [Tr. p. 229.]

Comment:

According to Miss Watson she was employed by Stanley Grove Spiro in May 1936 and then again acting as a clerk "Alex Graham paid my wages". Thereafter Stanley Grove Spiro told her to go to 36 New Broad Street and, as a messenger boy, Alex Graham took her there. At the New Broad Street address she was introduced to William Underhill, whom she understood was the manager and from May, 1936, until January, 1937, she remained in the employ of Maclean & Henderson at 36 New Broad Street. It seems that besides Spiro and Underhill the next important individual at Maclean & Henderson's was a Mr. Green. There is no evidence of criminality so far as the testimony of Miss Watson is concerned in relation to appellee Strakosch, otherwise Graham.

ETHEL MARY LOWRY (Typist) [Tr. p. 230]:

"I was . . . engaged as a shorthand typist by Stanley Grove Spiro . . . I was told to take instructions from a Mr. Aprange . . .

"I have known Alex Graham since the autumn of 1932. I knew him as Mr. Strakosch . . . I have seen Stanley Grove Spiro write in various disguises."

Comment:

No evidence of criminality in the statement of witness Lowry as to appellee Strakosch.

ALEXANDER MICHAEL JONES (Managing Director)
[Tr. p. 231]:

“I am Managing Director of Mills Conduit Investments Ltd. of 16 Conduit Street, W. 1.

“In April, 1936, we let an upper part to Stanley Grove Spiro the third and fourth floors of 16, Conduit Street . . . The rent was £250 a year payable in advance. He came to the premises frequently . . . I know Alex Graham. He might have attended. I could not say . . . I only know that Maclean & Henderson were outside brokers established about 1860, and that Stanley Grove Spiro was the proprietor.”

[Tr. p. 232]: “Stanley Grove Spiro from time to time borrowed money on short dated loans from us. From 10 to 14 days. He sometimes deposited certificates and transfers for these loans . . . During the period 24th August, 1934, and 29th January, 1937, we paid by way of advances a number of cheques. Spiro was representing the firm of Maclean & Henderson in these transactions.

“Sometime in the early part of 1936 Stanley Grove Spiro came and told me that he was going abroad. He brought Alex Graham and introduced him as his assistant and asked should Alex Graham be wanting any money I was to let him have it and he would be responsible for it. He introduced Samuel Taylor to me in the same way. He told me Taylor was his brother-in-law and worked for him and if I lent him money he would be responsible when he came back.

“In Alex Graham’s case he deposited as collateral security Maclean & Henderson cheques. In Samuel

Taylor's case I think in one case there was a Maclean & Henderson cheque. There were only about four transactions in Samuel Taylor's case. I think in one case shares were put up for deposit.

“. . . William Underhill I know as of Maclean & Henderson. He was brought to me by Stanley Grove Spiro. [Tr. p. 233.]

“The actual cheques paid to Stanley Grove Spiro, Alex Graham and Samuel Taylor in connection with the loans referred to above I produced at the trial of Samuel Taylor, John William Robert Elphinstone and William Underhill.”

Comment:

The deposition of witness Jones discloses that Stanley Grove Spiro was the proprietor of Maclean & Henderson, and the fact that Stanley Grove Spiro “brought Alex Graham and introduced him as his assistant and asked should Alex Graham be wanting any money (he, Jones) was to let him have it and he (Spiro) would be responsible for it” certainly discloses no criminality so far as appellee Strakosch is concerned.

DAVID KERMAN (Managing Director) [Tr. p. 233]:

“I am Managing Director of Dunn Trust Limited

. . . .

“In the early part of 1934 I met Stanley Grove Spiro. From the beginning of January, 1935, we advanced money to Stanley Grove Spiro in large sums for short dates. We were handed securities in the form of stocks and shares with blank transfers or cheques, sometimes no securities were taken. I have seen a bundle of cheques, mostly made out to Stanley Grove Spiro. The total amount of those cheques is £95,000.

“I knew of the firm of Maclean & Henderson. It was on behalf of that firm that Stanley Grove Spiro was acting. Some of the securities were of clients of Maclean & Henderson and some were Spiro’s own clients. He was an outside broker associated with Maclean & Henderson and also S. R. Bunt & Co. He told me he was substantially in control of both these concerns.”

[Tr. p. 234]: “. . . Stanley Grove Spiro alone was carrying out these transactions. *In the early summer of 1936 Stanley Grove Spiro introduced both Alex Graham and Samuel Taylor to me.* He told me that they were his assistants and in charge of his office, while he was abroad. One or two transactions were carried out with Alex Graham and Samuel Taylor. So far as I remember we had no securities. They deposited Maclean & Henderson cheques and in most cases they were paid. Maclean & Henderson occasionally sent us their client’s cheques which they had endorsed.

“The actual cheques paid to Stanley Grove Spiro, Alex Graham and Samuel Taylor, in connection with the loans referred to above I produced at the trial of Samuel Taylor, John William Robert Elphinstone and William Underhill.”

Comment:

The only reference to appellee Strakosch by witness Kerman is to the effect that in the early summer of 1936 Spiro introduced Alex Graham and Samuel Taylor to the witness and told him that they (Graham and Taylor) were his assistants and in charge of his office *while he was abroad*. And that one or two transactions were carried out with Alex Graham and Samuel Taylor. The nature of these transactions and the amounts involved and the

circumstances are not disclosed by witness Kerman, or otherwise. Certainly, if Alex Graham either individually, or himself and Taylor, borrowed some money from the Dunn Trust Limited, that fact does not disclose any criminality on the part of appellee Strakosch as regards the nine defrauded victims and the charges in the British Government's second amended complaint.

Kerman stated that Spiro had told him that Graham and Taylor were his assistants and in charge of his office while he was abroad. How long, on this occasion, Spiro remained abroad, is not disclosed, nor has it been shown that while Spiro was absent Graham, as his alleged assistant, participated in any transaction by or through which any of the nine defrauded persons were injured, directly or indirectly.

OWEN WYATT WILLIAMS (Chartered Accountant)
[Tr. p. 234]:

"1. I am a chartered accountant . . .

"2. I have had access to various books of the firm of Maclean & Henderson, and have seen their banking accounts. No cash book has been found or produced to me. In the Clients' Ledger I have examined the accounts in the name of John Henry Turner, Reginald Harry East, Peter Daniel, William Fothergill, Frank Plater, John Cooper Russell and William Scott. I find in certain cases transaction of which they have spoken are not entered in the books at all." . . .

[Tr. p. 235.]

"14. I have investigated a series of transactions between *Stanley Grove Spiro* and the Mills Conduit Investments Ltd., and between *Stanley Grove Spiro* and the Dunn Trust Ltd. In each case *Stanley Grove Spiro* appears to have been acting throughout on behalf of *Maclean & Henderson*." [Tr. p. 238.]

“15. In the transactions with Mills Conduit Investments Ltd. Stanley Grove Spiro, Alex Graham (otherwise Strakosch), and Samuel Taylor received a large number of cheques by way of advances between August, 1934, and September, 1936. The total value of these cheques was £189,585.10.6. 116 of these cheques representing a total value of over £137,000 were converted into cash, and cheques to the value of over £19,000 were paid to the Anglo African Corporation Ltd.” [Tr. p. 238.]

“16. In the series of similar transactions with the Dunn Trust Ltd., between January, 1935, and February, 1937, Stanley Grove Spiro and his two associates, Alex Graham (otherwise Strakosch) and Samuel Taylor, received cheques to the total amount of £95,848.13.8. 58 of these cheques were converted into cash, representing a total value of over £64,000, and cheques to the value of over £13,500 were paid to the Anglo African Corporation Ltd. It will be seen that by this method *Stanley Grove Spiro was able to convert securities sent by clients of Maclean & Henderson into ready money.*”

Comment:

In referring to the transactions with Mills Conduit Investments, Ltd., and Dunn Trust, Ltd., the number and amount of checks claimed to have been received by Alex Graham is not set forth or itemized in any way. The same comment applies to Spiro and to Taylor. The reference of the witness to Spiro and Graham and Taylor and his description of Graham and Taylor as Spiro's two associates is a volunteered statement and, as to the witness, hearsay. So far as the deposition of witness Williams is concerned, it would appear therefrom that he never personally met either Spiro or Graham or Taylor

but was testifying solely as to figures obtained from various books of the firm of Maclean & Henderson. The witness David Kerman testified that so far as Dunn Trust, Ltd., was concerned only one or two transactions were carried out with Alex Graham and Samuel Taylor. Then, again, are not the books alone so far as appellee Strakosch is concerned merely hearsay. The testimony of this witness as to what the various books of the firm of Maclean & Henderson disclosed must be considered in connection with all of the other evidence submitted and the contention of appellee Strakosch is that no criminality on his part has been shown by competent evidence.

GEORGE EDMUND WALKER BRIDGE (Secretary of Trustees of Sir Francis Graham Moon Bart, Deceased) [Tr. p. 239]:

“I am secretary of the trustees of Sir Francis Graham Moon. . . . The trustees are the landlords of 1 Royal Exchange Ave., E. C. An agreement was entered into on 20th April 1936. I had an interview with Taylor beforehand, and a Mr. Graham came with the person who signed the agreement.

“Shortly before Xmas 1936 the name of Taylor was taken down from outside the building and another name, Keith Lambert, put up. I allowed Lambert to remain on sufferance. The amount due for rent was ultimately paid in part. The premises were vacated round about 26th February 1937.”

Comment:

Evidently Taylor negotiated the lease and Graham, as a messenger boy, conducted to Witness Bridge the person

(name undisclosed) who signed the agreement. No criminality as to Appellee Strakosch is here shown. The reference to him is wholly unimportant and immaterial.

THOMAS GANKERSEER (Detective Inspector) [Tr. p. 246]:

“. . . I have also made inquiries with a view to locating . . . Alexander Strakosch, alias Alex Graham, but . . . present whereabouts appear to be unknown. . . .

“I attach, marked ‘2’ a photograph of Alexander Strakosch, alias Alex Graham, whose description I have ascertained is” (then follows description) . . . An Austrian, holder of Austrian passport No. 537847. [Tr. p. 247.]

“I now believe Alexander Strakosch (alias Alex Graham) . . . to be in Berlin.”

Comment:

No evidence by this witness of criminality as to Appellee Strakosch. It is, however, interesting to learn from Detective Inspector Gankerseer, that Appellee Strakosch was an Austrian and carrying an Austrian passport. After proceedings were commenced against Strakosch in London, Herr Hitler annexed Austria to the German Reich, and now Strakosch is perforce a citizen of Germany. England will undoubtedly confine German citizens to concentration camps. Therefore were Strakosch extradited, and then tried and acquitted in London, he nevertheless would lose his liberty for the duration of the New World War.

As to the Law.

(Quoting from United States Code Annotated—Title 18—Criminal Code and Criminal Procedure—page 241):

“Section 651. Fugitives from foreign country. Whenever there is a treaty or convention for extradition between the Government of the United States and any foreign government, any justice of the Supreme Court, circuit judge, district judge, or commissioner, authorized so to do by any of the courts of the United States, or judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within the limits of any State, District, or Territory, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or commissioner, to the end that the evidence of criminality may be heard and considered. *If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.*”

Under the present treaty between Great Britain and the United States it is necessary for Great Britain to make out such a *prima facie* case of guilt on the part of the appellee Strakosch as would be sufficient in case Strakosch were accused of having committed the alleged act or acts within the territory of California to justify a magistrate of California in ordering that he be held for trial.

(See pages 188 to 195 of the American Journal of International Law, Section 2, Official Documents, Volume 29, Numbers 1 and 2, January and April, 1935.)

Article 9 of the extradition treaty between the United States of America and Great Britain reads as follows, to-wit:

“The extradition shall take place *only if the evidence be found sufficient*, according to the laws of the High Contracting Party applied to, *either to justify the committal of the prisoner for trial*, in case the crime or offence had been committed in the territory of such High Contracting Party, or to prove that the prisoner is the identical person convicted by the courts of the High Contracting Party who makes the requisition, and that the crime or offence of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the High Contracting Party applied to.”

In the Penal Code of California, Chapter VII, providing for the examination of the case, and discharge of the defendant or holding him to answer, Section 871 provides as follows, to-wit:

“871. DISCHARGE OF DEFENDANT: WHEN REQUIRED: INDORSEMENT. If, after hearing the proofs, it appears either that no public offense has been committed or *that there is not sufficient cause to believe the defendant guilty of a public offense*, the magistrate must order the defendant to be discharged, by an indorsement on the depositions and statement, signed by him, to the following effect: ‘There being no sufficient cause to believe the within-named A. B. guilty of the offense within mentioned, I order him to be discharged.’ (Enacted 1872.)”

As to whether the evidence is sufficient to establish the criminality of the accused for extradition purposes can be inquired into by habeas corpus, see affirmative holding in

Hatfield v. Guay, U. S. Marshal, et al., 87 Fed. (2d) 358 (decided by Circuit Court of Appeals, First Circuit, January 5, 1937);

Oteiza y Cortes v. Jacobus (C.C.A. N. Y. 1890), 136 U. S. 330;

Ornelas v. Ruiz, 161 U. S. 502;

Pierce v. Creecy, 210 U. S. 387;

McNamara v. Henkel, 226 U. S. 520 (1913);

Fernandez v. Phillips, 268 U. S. 311.

We are of the opinion that the proceeding before the Commissioner is not to be regarded as in the nature of a final trial, by which the prisoner could be convicted or acquitted of the crime charged against him, *but rather of the character of those preliminary examinations, which take place every day in this country, before an examining or committing magistrate, for the purpose of determining whether a case is made out which will justify the holding of the accused, either by imprisonment or under bail, to ultimately answer to an indictment or other proceeding in which he shall be finally tried upon the charge made against him.* The language of the treaty which we have cited, above quoted, explicitly provides that the commission of the crime shall be so established as that the laws of the country in which the fugitive or the person so accused shall be found would justify his or her apprehension and commitment for trial, if the crime had been there committed. This describes the proceedings in these preliminary examinations as accurately as language can well do it.

Oteiza y Cortes v. Jacobus (C.C.A. N. Y. 1882),
136 U. S. 330.

Where a United States Commissioner held an accused for extradition on *two* charges, and the District Court on habeas corpus, affirmed the action of such Commissioner; nevertheless, on appeal, the Circuit Court of Appeals, in reviewing the proceedings, held that the accused could only be extradited on *one* of the charges, and reversed the District Court and Commissioner as to the other charge, upon the ground of insufficiency of the evidence to sustain such last named charge.

See *Hatfield v. Guay*, 87 Fed. (2d) 364.

Individual Extradited Can Only Be Tried by Requesting Jurisdiction on Charges for Which Extradition Was Granted.

“A person, who has been brought within the jurisdiction of the court by virtue of proceedings under an extradition treaty, can only be tried for one of the offenses described in that treaty, *and for the offense with which he is charged in the proceedings for his extradition*, until a reasonable time and opportunity have been given him, after his release or trial upon such charge, to return to the country from whose asylum he has been taken. . . .

“The immunity from trial for any other offense than that for which extradition has been granted, *cannot be waived by the accused*, since an individual cannot release the government from the obligations with reference to fugitives from justice which it has assumed toward other nations with which it has entered into extradition treaties. . . . In Great Britain it is expressly provided by law that a person whose extradition has been granted to that government for one crime cannot be tried for another.”

Citing authorities:

25 *Corp. Jur.*, p. 294.

(See Extrad. Act (1870), Sec. 19 and other citations on pages 294 and 295 of Vol. 25, *Corp. Jur.*).

Therefore, if Commissioner Head's decision is sustained, and Strakosch extradited, *he could be tried on each and all of the 19 counts. An examination of the evidence discloses the absurdity of such a development.*

Treaty for the Extradition of Criminals Made Between the Government of Great Britain and the United States of America, and Dated December 22, 1931, and Proclaimed as Law by the President of the United States on the 9th Day of August, 1932, Did Not Become of Force Until June 24, 1935, Because Not Published by Great Britain Until June 14, 1935. This Treaty Is Known as the Dawes-Simon Extradition Treaty.

Curiously enough, in examining the decision of the Circuit Court of Appeals, First Circuit, in the case of *Hatfield v. Guay*, decided January 5, 1937, and reported 87 Fed. Rep. 2d Series, on page 358, we read that the Dawes-Simon Extradition Treaty of December 22, 1931, although published by the Proclamation of the President on the 9th day of August, 1932, did not, as a matter of fact, become effective until June 24, 1935, because its publication by Great Britain only occurred on June 14, 1935, and the eighteenth article of said treaty provided that the treaty should "come into force ten days after its publication." Citing 47 Stat. 2122-2127.

Commissioner Head, as hereinbefore set forth [Tr. p. 34], found that the nineteen crimes alleged and charged in said second amended complaint are embraced in the treaty for the extradition of criminals between the United States and Great Britain and proclaimed as law by the President of the United States on the 9th day of August, 1932, providing for extradition on account of the crimes or offenses of fraudulent conversion and obtaining money, valuable securities or other property by false pretenses.

The transaction complained of by the defrauded witness John Henry Turner occurred February 8, 1935, and one of the transactions of the defrauded witness Reginald Harry East occurred June 17, 1935. Hence the charges based upon these two transactions must be eliminated, irrespective of any and all insufficiency of evidence.

Conclusion.

In view of the foregoing appellee Alexander Strakosch respectfully prays that the decision of the Hon. Harry A. Hollzer, United States District Judge, rendered March 18, 1938, be affirmed, and that he should be awarded his costs herein.

Respectfully submitted,

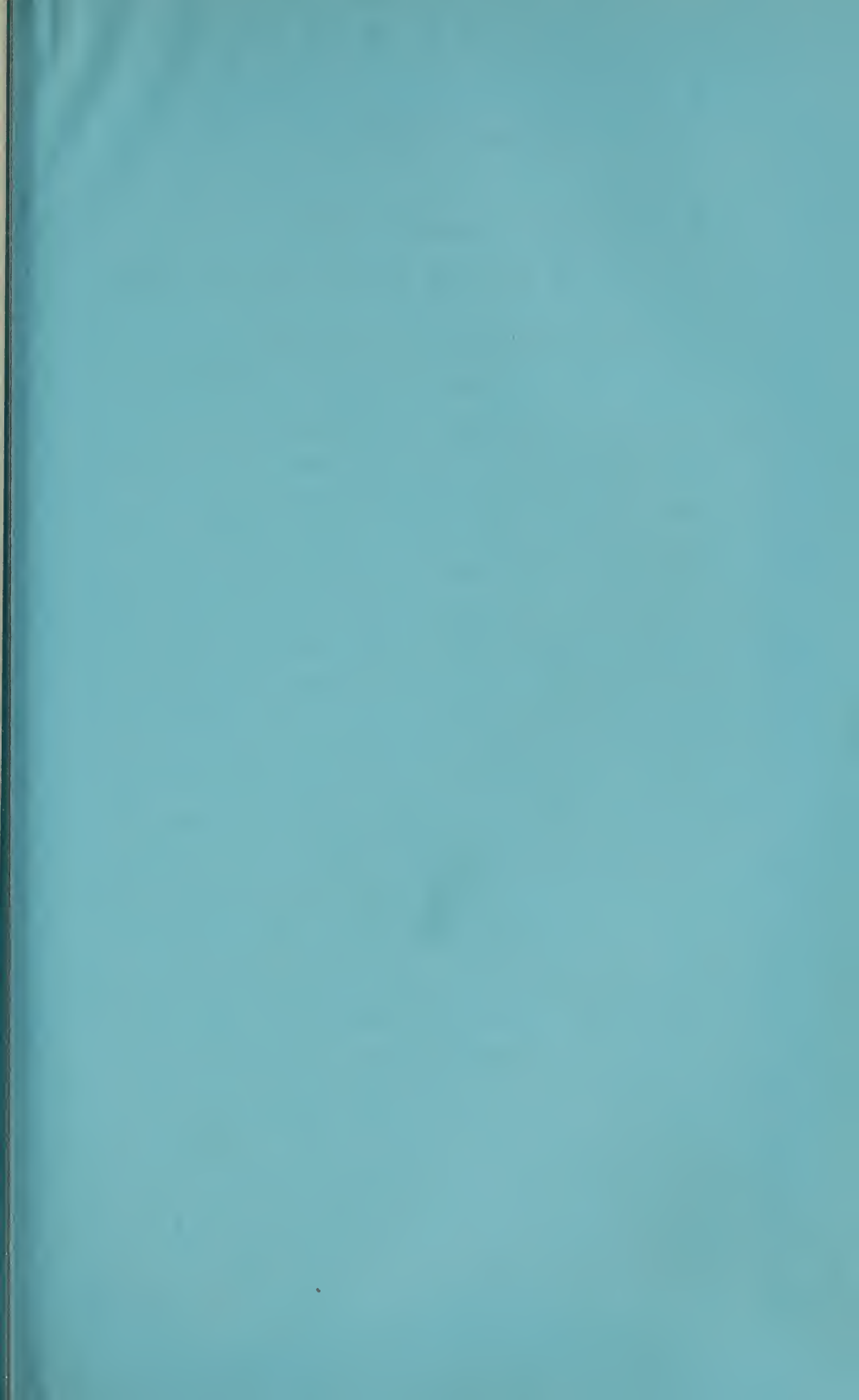
ISIDORE B. DOCKWEILER,

FRANK P. JENAL,

FREDERICK C. DOCKWEILER,

Attorneys for Appellee.

September 13th, 1939.





APPENDIX A.

Judge Hollzer's Decision.

(Title of District Court and Cause.)

MEMORANDUM OF CONCLUSIONS.

Judge Hollzer, March 18, 1938.

It appearing that on the 14th day of October, 1937, a complaint was filed through the office of the U. S. Attorney for the Southern District of California against the petitioner herein for the purpose of securing a warrant for the arrest of petitioner and conducting a hearing before the U. S. Commissioner upon charges of alleged criminality on the part of petitioner, to the end that petitioner be extradited for trial in Great Britain, that by leave of the U. S. Commissioner for Los Angeles County a first amended complaint was thereafter filed, and that by leave of said Commissioner a second amended complaint was subsequently filed, and that no objection was interposed by petitioner to the filing of either of said amended complaints, and

It further appearing that a hearing was conducted before said Commissioner upon said second amended complaint, that the evidence presented at said hearing consisted solely of the following documents, etc., to-wit: a copy of a certain Information of the Director of Public Prosecutions against one Stanley Grove Spiro and one Alex Graham (otherwise Strakosch) the latter being the petitioner herein, also copies of certain depositions and exhibits referred to therein and also a duplicate [101] original warrant of arrest, all duly certified and properly attested, and

It further appearing that by said Information, subdivision (a) thereof, it is charged that petitioner and said Spiro on February 8, 1935, with intent to defraud, did cause or procure to be delivered by John Henry Turner to Maclean & Henderson, for the use and benefit of themselves and of Maclean & Henderson certain valuable securities by falsely pretending that said firm of Maclean and Henderson was then carrying on an honest and genuine business as investment brokers and was then prepared to give honest advice as to the purchase and sale of stocks and shares and that certain securities of Scottish Gas Utilities Corporation Limited were a sound investment and worth a certain sum, and

By said Information, subdivision (b) thereof, it is charged that petitioner and said Spiro on June 17, 1935, with intent to defraud, did cause or procure to be delivered by Reginald Harry East to Maclean & Henderson for the use and benefit of themselves and of said Maclean & Henderson, certain valuable securities, by similar false pretenses, and

By said Information, subdivision (c) thereof, it is charged that petitioner and said Spiro on February 3, 1936, being entrusted by Reginald Harry East with £784 in order that they might apply the same to the purchase of £800 Lipton Ltd. 4½% Debentures, did fraudulently convert the same to a similar use and benefit, and

By said Information, subdivision (d) thereof, it is charged that petitioner and said Spiro on August 23, 1935, with intent to defraud, did cause or procure to be [102] delivered by Peter Daniel to Maclean & Henderson for a similar use and benefit certain valuable securities, by similar false pretenses, and

By said Information, subdivision (e) thereof, it is charged that petitioner and said Spiro on October 10, 1935, having received a check for the payment of a certain sum of money for and on account of Peter Daniel, did fraudulently convert the same and the proceeds thereof to a similar use and benefit, and

By said Information, subdivision (f) thereof, it is charged that petitioner and said Spiro on August 3, 1936, with intent to defraud did cause or procure to be delivered by Frank Plater to Maclean & Henderson for the use and benefit of themselves and said Maclean & Henderson, a check for the payment of a certain sum of money by similar false pretenses, and

By said Information, subdivision (g) thereof, it is charged that petitioner and said Spiro on October 10, 1936, with intent to defraud did cause or procure to be delivered by William Scott to Maclean & Henderson for a similar use and benefit a check for the payment of a certain sum of money, by similar false pretenses, and

By said Information, subdivision (h) thereof, it is charged that petitioner and said Spiro on October 20, 1936, with intent to defraud did cause or procure to be delivered by John Cooper Russell to Maclean & Henderson, for a similar use and benefit, certain valuable securities by similar false pretenses, and

By said Information, subdivision (j) thereof, it is charged that petitioner and said Spiro on October 20, 1936, with intent to defraud did cause or procure to be delivered [103] by William Fothergill to Maclean & Henderson, for a similar use and benefit, a check for the payment of a certain sum of money, by similar false pretenses, and

By said Information, subdivision (k) thereof, it is charged that petitioner and said Spiro, on December 4, 1936, with intent to defraud did cause or procure to be delivered by Francis Jackson to S. R. Bunt & Co., for the use and benefit of said S. R. Bunt and Co. and themselves, a check for the payment of a certain sum of money, by falsely pretending that said firm of S. R. Bunt & Co. then was carrying on an honest and genuine business as investment brokers, and that said firm then was prepared to give honest advice as to the purchase and sale of stocks and shares and that 5s/-shares in the West African Mining Corporation Ltd. were a sound investment, and that they were then worth more than 8s/6d a share, and

By said Information, subdivision (l) thereof, it is charged that petitioner and said Spiro on December 9, 1936, with intent to defraud did cause or procure to be delivered by Charles Henry Row to S. R. Bunt & Co., for a similar use and benefit, a check for the payment of a certain sum of money, by similar false pretenses, and

It further appearing that by said second amended complaint it is charged in Paragraph VIII a thereof as follows:

In subdivision (a) thereof the petitioner and said Spiro are accused of committing the offense described in subdivision (a) of said Information;

In subdivision (b) thereof the petitioner and said Spiro are accused of committing the offense described in subdivision (b) of said Information; [104]

In subdivision (c-1) thereof it is alleged that petitioner and said Spiro in the month of February, 1936, being entrusted by Reginald Harry East with £791.19.6 to buy 300 Great Universal Stores Ltd. shares, did

fraudulently convert the same to the use and benefit of themselves and of Maclean & Henderson;

In subdivision (c-2) thereof it is alleged that petitioner and said Spiro in the month of February, 1936, being entrusted by Reginald Harry East with £800 in order that they might apply it to the purchase of £800 Lipton Ltd. 4½% Debentures, fraudulently converted the same to the use and benefit of themselves and of Maclean & Henderson;

In subdivision (d) thereof it is alleged that petitioner and said Spiro with intent to defraud caused or procured to be delivered by Peter Daniel to Maclean & Henderson for the use and benefit of themselves and of Maclean & Henderson on August 12th, 55 Nat. Canning Ord. valued at £63.4.6; on August 23rd 1060 Every Ready Ord. valued at £1152.12.0; £1180 4% Consols valued at £1137.13.6; £50 3½% War Stock valued at £52.5.9; £500 2½% India Stock of the value of £351.16.6; on October 9th, 100 Bats 6% Pref. of the value of £143.11.6, 321 Bats. Ord. of the value of £1759.5.7; on Oct. 29th Yorksh. Amalg. Prod. Deb. of the value of £383.19.9, 850 Allied Newspaper Ord. of the value of £1269.10.0, 1000 Carbo Plaster Ord. of the value of £271.16.6, 500 Ideal Building 5% Cum. Pref. of the value of £434.6.6, 160 Brit. Shareholders Ord. of the value of £254.9.0, £650 Gaumont Brit. Deb. of the value of £599.13.0, 400 Thomas Tilling Ord. of the value of £1194.17.0, all of the total value of £9,271.1.10, [105] all in the year 1935 by falsely pretending that said firm of Maclean & Henderson then was carrying on an honest and genuine business as investment brokers and then was prepared to give honest advice as to the purchase and sale of stocks and shares.

In subdivision (e) thereof the petitioner and said Spiro are accused of committing the offense described in subdivision (e) of said Information.

In subdivision (f) thereof the petitioner and said Spiro are accused of committing the offense described in subdivision (f) of said Information, except that the date when the offense is alleged to have been committed is specified as being between July 28 and August 11, 1936.

In subdivision (g-1) thereof the petitioner and said Spiro are accused of committing the offense described in subdivision (g) of said Information, except that the check is described as being in a different amount, to-wit, £242.13.6. and the date when the offense is alleged to have been committed is specified as being April 3, 1936.

In subdivision (g-2) thereof the petitioner and said Spiro are accused of committing the offense described in subdivision (g) of said Information, except that the property alleged to have been procured by them consisted of moneys, to-wit, £375 and the date when the offense is alleged to have been committed is May 28, 1936.

In subdivision (g-3) thereof the petitioner and said Spiro are accused of committing the offense described in subdivision (g) of said Information, except that the property alleged to have been procured by them is described as two checks totaling £375.3.6. and the date when the offense is alleged to have been committed is December 1, 1936. [106]

In subdivision (h) thereof the petitioner and said Spiro are accused of committing the offense described in subdivision (h) of the Information.

In subdivision (j-1) thereof the petitioner and said Spiro are accused of committing the offense described in

subdivision (j) of said Information, except that the amount of the check involved is £232.1.0. and the date when the offense is alleged to have been committed is May, 1936.

In subdivision (j-2) thereof the petitioner and said Spiro are accused of committing the offense described in subdivision (j) of said Information, except that the amount of the check involved is £158.3.6., and the date when the offense is alleged to have been committed is August 3, 1936.

In subdivision (j-3) thereof the petitioner and said Spiro are accused of committing the offense described in subdivision (j) of said Information, except that the amount of the check involved is £700.0.9., and that the value of new securities recommended to be bought is alleged to be $7/4\frac{1}{2}$ each.

In subdivision (k-1) thereof the petitioner and said Spiro are accused of committing the offense described in subdivision (k) of said Information, except that the date when the offense is alleged to have been committed is specified as October 20, 1936, and the amount of the check involved is £337.8.6. and except that the new securities recommended to be bought are described as Gold Reefs of West Africa.

In subdivision (k-2) thereof the petitioner and said Spiro are accused of committing the offense described in [107] subdivision (k) of said Information, except that the date when the offense is alleged to have been committed is specified as November 4, 1936, and the amount of the check involved is £795.

In subdivision (k-3) thereof the petitioner and said Spiro are accused of committing the offense described in

subdivision (k) of said Information, except that the date when the offense is alleged to have been committed is specified as February 1, 1937.

In subdivision (1-1) thereof, the petitioner and said Spiro are accused of committing the offense described in subdivision (1) of said Information except that the date when the offense is alleged to have been committed is specified as October 20, 1936, and the amount of the check involved is £202.13.6, and except that the new securities recommended to be bought are described as Gold Reefs of West Africa.

In subdivision (1-2) thereof, the petitioner and said Spiro are accused of committing the offense described in subdivision (1) of said Information, except that the date when the offense is alleged to have been committed is specified as November 9, 1936.

It further appearing from the depositions hereinafter mentioned that evidence was introduced at said hearing before the Commissioner to the following effect, to-wit:

According to the deposition of Peter M. Hunter, the deponent had been a member of the firm of Maclean & Henderson, that in 1934 he sold the business of said firm to said Spiro and a party known as Elphinstone, the purchase being made in the name of Elphinstone. [108]

According to the deposition of Luis Sancha, the deponent had rented certain premises at 36 New Broad Street, to a firm known as Maclean & Henderson, first meeting said Spiro accompanied by petitioner and later meeting Elphinstone who said he was the proprietor of the business.

According to the deposition of Agnes E. Payn, an official in the office of the Registry of Business Names,

Chansitor House, Chancery Lane, W. C. 2, the records of this office show that the firm of Maclean & Henderson was registered on August 21, 1935, by Elphinstone, that business commenced October, 1934, the place of business was 36 New Broad Street, E. C., that notice was given of cessation of business as from October 10, 1936; these records also show that the firm of S. R. Bunt & Co. was first registered March 20, 1917, by S. R. Bunt, later, on March 7, 1936, a certificate was issued to Samuel Taylor, and the address of the business was given as 1 Royal Exchange Avenue, E. C., that notice was given of cessation of business by Taylor, December 10, 1936, stating business ceased November 26, 1936.

According to the deposition of George W. Baldwin, an official in the office of the Commissioner of Crown Lands, the records of this office show that said Spiro by assignment dated May 8, 1931, acquired the lease of 5 Suffolk Street, Pall Mall, S. W., that said lease expired in October, 1933, and another one was granted for seven years, that the rent was usually paid with an Anglo African Corporation check, one check being drawn by S. Taylor.

According to the deposition of Leonard P. Darsley, an official in the Registry of Companies, the records of this office show with respect to Anglo African Corporation Ltd. [109] that the same was incorporated in 1902, that from time to time its capital was increased and various changes were made in its directors, that on August 14, 1931, its office was changed to 5 Suffolk Street, that under date of May 3, 1934, notice was given of the addition of Samuel Taylor as director.

Likewise, according to the same deponent, these records show with respect to Scottish Gas Utilities Corporation

Ltd., that the same was incorporated in 1932 with its office at 5 Suffolk Street, that from time to time its capital was increased and various changes were made in its directors, that the total number of its issued shares amounted to 70,002, of which 7,000 shares were allotted to petitioner, that the return of directors dated May 3, 1934, listed four directors, one of whom was Samuel Taylor who at one time held 11,000 shares and subsequently held 22,000 shares and that this company was liquidated February 22, 1937.

Likewise, according to the same deponent these records show with respect to Gold Reefs of West Africa Ltd. that the same was incorporated November 1, 1934, and that its capital was increased from £1000 to £100,000, that a return dated February 26, 1936, stated the total number of shares then outstanding amounted to 85,107, that later 21,000 additional shares were issued and that it had various directors. Likewise, according to the same deponent, these records show with respect to West African Mining Corporation, that the same was incorporated November 2, 1936, that its capital was originally £1,000 in 4,000 5/s-shares, that on November 23, 1936, its capital was increased to £200,000 by the creation of 796,000 5/s- shares, [110] and that a return filed January 11, 1937, stated that 170,000 shares were allotted to R. I. Hickman.

According to the deposition of Francis J. Mildner, a printer, deponent called on petitioner at the office of Maclean & Henderson and received from petitioner an order for printing on behalf of said firm about the end of 1934, that subsequently several persons gave deponent orders for printing on behalf of said firm, that as a rule petitioner paid deponent; that the latter knew Samuel Tay-

lor who gave deponent orders for Scottish Gas Utilities Corporation, Ltd., and paid for the same in cash; that Taylor asked deponent to do printing for S. R. Bunt & Co. and his name appeared as proprietor of that firm; deponent saw said Spiro fairly frequently at 5 Suffolk Street, where he gave deponent orders.

According to the deposition of John H. Turner, deponent had been doing business since 1897 with Maclean & Henderson, that on February 6, 1935, one J. Elphinstone called on deponent, recommended the purchase of Scottish Gas Utilities Corporation Ltd. Debentures and induced deponent to sell 300 London and Manchester Life Assurance Co. shares and purchase Scottish Gas Utilities Corporation Ltd. Debentures to the amount of £5,300.

Likewise according to the same deponent, the latter at the end of March conferred with Elphinstone at 36 New Broad Street and thereafter on the same day and at the latter's request conferred with Samuel Taylor at 5 Suffolk Street concerning these Scottish Gas Utilities Corporation Securities.

According to the deposition of Reginald H. East, this [111] deponent early in 1935 began to receive a copy of "Weekly Financial Review" from Maclean & Henderson, that on June 17, 1935, he was visited by a party named Royston, representing Maclean & Henderson, who advised deponent to sell certain securities and recommended that the latter put the proceeds into Scottish Gas Utilities Corporation Ltd., and Brucefield Collieries Ltd., that deponent instructed Royston to sell securities to the value of £17,000 and to invest the proceeds in these two concerns, that deponent's securities were sold and he received Scottish Gas Utilities Corporation Ltd. 5½% notes to the nominal

value of £6500 and a certificate for £10,245 Brucefield Collieries Ltd. Debentures, that he had received no interest on the latter securities since February, 1936;

According to this same deponent, in February, 1936, he instructed Maclean & Henderson to buy for his account 800 Lipton Ltd. 4½% Debenture stock for which he paid by sale of shares held by them, but never received a certificate for this stock although he was given a note purporting to show such purchase; that a little later, deponent instructed Maclean & Henderson to buy 300 Great Universal Stores Ltd. shares for which he paid but received no certificate respecting the same although he was given a note purporting to acknowledge such purchase; that he received letters from Maclean & Henderson stating they had purchased these shares through S. R. Bunt & Co., that they were bringing pressure to bear on the latter for delivery, that they were prepared to institute legal proceedings against S. R. Bunt & Co., and later stating that the latter had sent to Maclean & Henderson a check covering the amount involved, and finally stating that Maclean & Henderson would send [112] their own check, but no check was received by deponent;

According to this same deponent, he lost through his dealings with Maclean & Henderson in all about £19,000 and that the shares which he gave to Maclean & Henderson on June 17, 1935, were as follows: (Same as more particularly described and at the times specified in subdivision (b) of paragraph VIII-A of the second amended complaint.)

According to the deposition of Peter Daniel, this deponent in the summer of 1935 received from time to time a paper called "Financial Review" from Maclean & Hen-

derson, also received a letter dated July 26, 1935, and later that month deponent was visited by a man who gave his name as Royston but whose true name was Spiro, one of the defendants herein. Deponent discussed with Spiro the matter of making investments and from time to time deponent handed over certain securities to Spiro, received notes that they had been sold; on August 23, 1935, deponent received a note purporting to show that Spiro had purchased £2,830 Brucefield Collieries Debentures on deponent's behalf, later Spiro said this company was a new concern and that the Debentures were perfectly safe but no certificate for these debentures was given to deponent.

According to this same deponent, on or after August 23, 1935, Spiro sold further shares on behalf of deponent who sent a check for £1000 to purchase further securities; by October 29, 1935, Spiro held on behalf of deponent a total of £10,271.1.10; deponent received notes acknowledging that Spiro had made the following purchases with moneys paid to Maclean & Henderson, to-wit, on October 9, 1935, 2,200 Chartered shares costing £2,902.8.6; on October 29, 1935, British Oil Cake 10% Preference shares also 10 Fine Cotton Spinners Debentures, also 10 English Electric Debentures, also 10 Dormen Long Debentures, all of said purchases at the total [113] cost of £7,377.13.0, but deponent received no certificate for the same.

According to this same deponent, Spiro told him that if he rang up Maclean & Henderson and was unable to get in touch with Spiro he was to ask for petitioner and deal with no one else; that early in December, 1935, he telephoned to Maclean & Henderson and spoke to petitioner who said that the certificates were often held up; later

deponent obtained judgment for £10,551 but received only £500 out of that amount;

According to this same deponent he sent securities to Spiro for sale as follows: (Same as more particularly described and at the times specified in subdivision (d) of paragraph VIII-A of the second amended complaint); also that on October 9, he gave to Maclean & Henderson cash in the amount of £1000.0.0;

According to the deposition of William Scott, this deponent on April 3, 1936, received a telephone call from the London office of Maclean & Henderson, on which occasion a party giving the name of Richards advised him to purchase shares in Associated Electrical Industries, and accordingly the latter sent his check for £242.13.6 to purchase 100 shares. On April 22, 1936, during another telephone conversation with Richards, the latter advised deponent to sell those shares and to reinvest in Gold Reefs of West Africa shares. Relying upon the representations then made deponent agreed to the sale of his Associated Electric Industries shares and to reinvesting the proceeds in 185 Gold Reefs of West Africa shares. Later, on Richards' advice deponent bought Imperial Chemical Shares and toward the end of May, 1936, on his advice, sold these shares and reinvested the proceeds on May 28, 1936, in 1200 Gold Reefs of West Africa shares. [114]

According to this same deponent in August, 1936, he received a letter from Robert Irving and Co. offering to buy these last mentioned shares, and upon writing to Maclean & Henderson concerning this letter was advised on the telephone by them not to accept the offer. In September and October, 1936, Richards telephoned to deponent urging him to purchase additional Gold Reefs of West Africa shares, and accordingly the latter agreed to buy

1060 more shares and paid £375.3.6. for the same. Late in October, 1936, deponent received a call from a man giving the name of Stanley of Maclean & Henderson who advised him to buy more of these shares but he refused to do so.

According to this same deponent on November 13, 1936, Richards telephoned to him stating that West African Mining had acquired control of Gold Reefs of West Africa and advising him to exchange his shares accordingly, which deponent agreed to do. On January 28, 1937, a transfer of 3000 shares in West African Mining Corporation out of the name of Alexander Graham—a name used by petitioner—was sent to deponent but the latter refused to sign the same. Deponent paid a total of £994.9.9. for shares purchased on the advice of Maclean & Henderson which he believes to be valueless.

According to the deposition of John C. Russell this deponent in 1935 received a communication from Maclean & Henderson regarding certain shares which he then held and later from time to time received a copy of a weekly journal. Early in May, 1936, Richards of Maclean & Henderson telephoned to deponent and advised him to buy Gold Reefs of West Africa shares, and relying upon such advice he bought 185 shares. Thereafter Richards telephoned periodically advising deponent to increase his holdings. Between May and October, 1936, deponent purchased 18,105 Gold Reefs of West Africa shares and paid for the same by sending good securities to Maclean [115] & Henderson to be sold. In August, 1936, deponent received from a firm, name forgotten, an offer to purchase these shares at a price higher than that which he had paid, and upon sending this letter to Maclean & Henderson was advised on the telephone by Richards not to accept the

offer. In October, 1936, deponent received a call from a representative of Maclean & Henderson, giving the name of Simpson, who advised him to buy still more of these shares, and accordingly he purchased 6300 additional shares. On November 13, 1936, Richards told deponent over the telephone that West African Mining Corporation was going to buy Gold Reefs of West Africa shares at a price higher than that paid by the latter, and accordingly he instructed Richards to sell all of his shares. The next day deponent received a letter dated October 20, 1936, and a note purporting to show these shares had been sold, but instead of receiving the money therefor deponent received a note for the purchase of a similar number of shares in West African Mining Corporation. Deponent believes that all of these shares were valueless at all times and states that West African Mining Corporation never had any working capital and that when he received the note for the purchase of 18,105 shares in that concern, its total capital was £1000 divided into 4,000 5/- shares.

According to this same deponent he lost a total of £5,714.3.3. through his dealings with Maclean & Henderson, that in connection with his purchase of 6300 Gold Reefs of West Africa shares on Simpson's advice he delivered to Maclean & Henderson the following securities to-wit:

- 210 Hallamshire Coal Supplies shares
- 1515 Brooks & Doxey Ltd. shares
- 120 Tinsley Park Colliery shares
- 1515 Wigan Coal & Iron shares and
- 936 J. Compton Sons & Webb Ltd. shares [116]

According to the deposition of William Fothergill, this deponent early in 1935 received a communication from

Maclean & Henderson and since then from time to time received a paper called "Weekly Financial Review". In that year he had one or two small transactions with this firm. In May, 1936, deponent received a call over the telephone from a man giving the name of Richards, stating he was London Office Manager of that firm, and advising deponent to buy Associated Electrical Industries shares, and accordingly the latter purchased 100 shares paying therefor by check in the amount of £232.1.0. Later Richards telephoned deponent advising him to sell these shares and to buy Gold Reefs of West Africa shares. The latter agreed to this and the proceeds were reinvested in 725 Gold Reefs of West Africa shares. About August 30, 1936, deponent received a letter from Robert Irving and Co. offering to buy these shares at an increased price, but on the following day Richards over the telephone advised him to purchase more of these shares and thereupon deponent purchased 500 additional shares paying £158.3.6. On October 19, 1936 deponent was visited by a man giving the name of Mortimer who advised him to purchase still more of these shares, stating the same would be listed shortly on the stock exchange at a very handsome premium, and believing such representations, deponent, on October 20, 1936 paid £700.09. for 2,217 additional shares.

According to this same deponent on October 27, 1936, he was visited by Mortimer, who made further representations concerning the advantages of this stock and persuaded him to sell 430 Mexican Eagle shares and invest the proceeds in 2250 more Gold Reefs of West Africa shares. [117] Deponent was persuaded to buy a total of 5,692 such shares at a cost of nearly £1,800. Deponent has been informed and believes that these shares are practically without value. On November 9, 1936,

deponent called at 36 Old Broad street, asked to see the manager, Mr. Richards, but was unable to see him or Mr. Mortimer. Deponent was informed and believes that the letter he received from Robert Irving & Co. was sent out on the instructions of Spiro, who at the time controlled that firm and one of his employees, Ethel M. Lowry, signed such letter.

According to the deposition of Frank Plater, this deponent in 1935 began to receive the "Weekly Financial Review" from Maclean & Henderson of 36 New Broad street. On July 28, 1936, he received a letter from that firm recommending him to buy shares of John Brown & Co., Ltd., and accordingly he instructed them to purchase 50 shares of that company and sent a check in payment amounting to £88.0.6. Subsequently a man giving the name of Richards and describing himself as manager for Maclean & Henderson, telephoned to deponent from time to time, suggesting that he sell these shares and invest in Gold Reefs of West Africa, Ltd. On August 11, 1936, relying upon the representations made, deponent gave instructions to sell these shares and to reinvest the proceeds in Gold Reefs of West Africa, Ltd., shares.

According to this same deponent, he later received a letter dated August 29, 1936, from a firm named Irving & Co. offering to buy these Gold Reefs of West Africa shares at a higher price, thereupon he spoke to Richards on the telephone about this offer and Richards recommended against selling, but advised him to buy more. Deponent is informed and believes these shares are worthless. [118]

According to the deposition of F. Jackson, this deponent in 1936 began to receive from S. R. Bunt & Co. a stock market news publication. On October 20, 1936,

he received the telephone call from S. R. Bunt & Co., from a man giving the name of Stanley, who recommended that deponent purchase Hawker Aircraft shares. The latter sent to S. R. Bunt & Co. a check for £337.8.6. to purchase these shares, but before the transaction was completed Stanley telephoned to deponent and suggested that he sell these shares and reinvest in Gold Reefs of West Africa shares. Relying upon this advice, deponent agreed to sell his Hawker Aircraft shares, and to buy 1160 Gold Reefs of West Africa shares. Not seeing the latter shares quoted on the stock exchange, deponent wrote to S. R. Bunt & Co. and received a reassuring reply.

According to this same deponent on November 4, 1936, a man giving the name of Mortimer called on deponent, producing a letter of authority from S. R. Bunt & Co., and informed him that Gold Reefs of West Africa shares had increased in price, and advised him to sell the same and buy West African Mining Corporation shares. Relying on this advice, deponent instructed S. R. Bunt & Co. to sell his shares and to purchase 3,000 West African Mining Corporation shares, and sent his check for £795 to pay the balance due from him. Later Mortimer again called on deponent, informed him that these shares were worth considerably more than their present price, and that a certain influential man was interested in this corporation. Relying on this advice deponent agreed to buy 7,000 additional shares and gave Mortimer his check for £2,975. No certificates for any of these shares were delivered to deponent, but instead he received a letter [119] dated Feb. 1, 1937, enclosing a certified transfer for 3,000 shares and another for 7,000 shares, out of the name of Alex Graham.

According to this same deponent, he has been informed and believes that these shares are worthless, that the

activities of S. R. Bunt & Co. were controlled by Spiro through one Samuel Taylor, also that Spiro used the name of Stanley when purchasing the business of Maclean & Henderson and that during 1936 the latter firm dealt extensively first in Gold Reefs of West Africa shares and later in West African Mining shares. Deponent expended a total of £4,100 in the purchase of these shares.

According to the deposition of C. H. Row, this deponent about October 20, 1936 received a telephone call from S. R. Bunt & Co., from someone who did not give his name, but who advised deponent to buy Hawker Aircraft shares. Deponent agreed to do so and sent his check for £202.13.6. to buy 120 shares; but before taking the shares received another telephone call and was advised to sell the same and reinvest in Gold Reefs of West Africa. Acting on this advice, he agreed that S. R. Bunt & Co. could sell these shares and invest the proceeds in 600 Gold Reefs of West Africa shares.

According to this same deponent, on November 9, he received a visit from a man giving the name of Mortimer who produced a letter of authority from S. R. Bunt & Co., and who told deponent that the latter shares had gone up, and advised him to sell the same and to purchase 5,000 West African Mining Corporation shares. Deponent agreed to take 1,000 of these shares, and gave S. R. Bunt & Co. his check for £170. After some correspondence about these shares, [120] deponent called at the office of S. R. Bunt & Co. on January 22, 1937, and there informed a man named Keith Lambert that he wished to sell these shares. This man told deponent that Samuel Taylor, whose name appeared on the paper of S. R. Bunt & Co., was ill and that Mortimer was still

with the firm. Deponent received a transfer for 1,000 shares in West African Mining Corporation Ltd., out of the name of Alex Graham, and believes that Gold Reefs of West Africa shares and West African Mining Corporation shares are worthless.

According to the deposition of Charles Wood, a solicitor, this deponent acted as secretary for a company called Brucefield Collieries Ltd., from about March 20, 1931 to August 9, 1935. That he met Spiro about the beginning of 1935, that he discussed with Spiro the matter of the purchase of that company, that he received some money from Anglo African Corporation Ltd. which was applied as a deposit upon that purchase, that he advised Spiro on the matter of issuing debentures but the latter resented such advice, that deponent discussed this subject with Samuel Taylor as well as Spiro, that later, on or about August 9, 1935, following a conversation between them and deponent during which a disagreement arose on this subject, the latter resigned. Deponent surrendered all records, etc., to Samuel Taylor who paid part of his fee.

According to the deposition of B. Waters, a Higher Clerical Officer at the General Post Office, an agreement for the installation of a telephone at 16a Conduit Street W. was signed for by S. Taylor, and this signature is attached to other agreements respecting telephone numbers. [121] The records show telephone calls were placed from various addresses, to-wit, 5 Suffolk Street and 36 New Broad Street to R. H. East, on July 2 and 9, 1936, August 6, 14 and 17, 1936, also that telephone calls to J. C. Russell were placed from 16a Conduit Street on September 21, and November 13, 23 and 30, 1936, also that telephone calls to F. Plater were

placed from the same address on August 11, 20 and 25 and September 7, 1936, also that telephone calls to William Scott were placed from the same address on September 7 and 10, October 8, November 2, 13 and 17 and December 7, all in 1936 and on January 12, 1937, also that telephone calls to F. Jackson were placed from the same address on October 20 and 30 and November 2, 1936 and January 4, 1937. Also that telephone calls to C. H. Row were placed from the same address on October 20, 22 and 30, and November 6, 1936, also that telephone calls to William Fothergill were placed from the same address on August 31, October 7 and 21, 1936, and November 21 and 23, 1936.

According to the deposition of C. W. Engel, this deponent on November 17, 1936 was engaged as book-keeper by J. Martin of Martin, Dale & Forsythe and acted as Registrar of Gold Reefs of West Africa Ltd. for a few months. Deponent on several occasions called at 29 King William Street to see the Secretary of West African Mining Corporation Ltd. and later acted as, and still is, secretary of that company. 170,000 shares were transferred to Mr. Hickman. Deponent met Hickman and last saw him in England in the latter part of 1936.

According to this same deponent, certain capital duties amounting to over £1000 have not been paid, there being no money to pay the same, deponent left Martin, Dale [122] and Forsythe early in January, 1937. Hickman introduced petitioner to deponent and was virtually the owner of the company. He told deponent he was disposing of his shares to petitioner and an agreement was signed by him dated November 30, 1936, which however, did not come into being until January, 1937. Hickman also told deponent that petitioner had said he would supply sufficient funds to work the company.

According to this same deponent, petitioner gave him instructions to get new offices, which he found but which were not suitable, and petitioner said he had found some and they moved into 7 Gresham Street; Messrs. Scully and King resigned as directors on January 21, when Graham took over and the next directors of the company were Messrs. Green and Chancellor. Petitioner was known to deponent as Graham, and the last occasion when he saw petitioner was February 4, 1937. Deponent certified 170,000 shares out of the name of Graham.

According to the deposition of F. W. Dove, this deponent is the concessionaire of certain Gold properties in the Gold Coast and an agreement was made to sell to West African Mining Corporation Ltd. certain rights and concessions for £63,500, payment to be £300 in cash and £20,000 in 5/-shares fully paid. This agreement is dated November 28, 1936. Deponent received £100 on account and nothing more.

According to the deposition of C. Morse-Stephens, this deponent in August, 1936 arranged with Mr. Martin of Martin, Dale & Forsythe to rent an office to be used by Robert Irving & Co. for £5 a month. Only one month's rent was paid and the office was used only for that time. [123] The only person the deponent saw there was a clerk named Miss Phillips. Deponent accepted the secretaryship of West African Mining Corporation about November, 1936, and delivered to Martin all letters addressed to that concern, never opening the same. Deponent resigned in January, 1937.

According to the deposition of May L. Phillips, this deponent was employed as shorthand-typist by Maclean & Henderson starting January, 1935. To obtain this position, she went to 5 Suffolk Street to interview a Mr.

Klein, and a few days later petitioner, known to her as Graham, took her from Suffolk Street to New Broad Street. There she typed out reports on various companies, receiving instruction from petitioner. Afterwards William Underhill became manager and she took instructions from him. He usually dealt with the post, although at times petitioner dealt with it. Some weeks later deponent saw J. W. R. Elphinstone who came in the evening to sign some letters. Petitioner used to come to the office almost every day and dictated all letters as to change of address. Deponent also attended to the telephone, but petitioner got his own numbers. The books were kept by W. Underhill and a Mr. Green. Deponent heard of Simpson and Richards but did not meet them. She knew Spiro as Stanley and saw him a few times. He used to talk to clients who called.

According to this same deponent, in April, 1936, she was taken by petitioner to S. R. Bunt & Co., 1 Royal Exchange Avenue, after he had informed Underhill that deponent was going to work there. She saw Samuel Taylor in that office a few times. His name was on the letterhead of S. R. Bunt & Co. Petitioner gave deponent orders at [124] S. R. Bunt & Co., and he opened letters, gave some to her and others he took away. About August, 1936, petitioner ceased to come there, and deponent did not see him afterwards. When he had gone, a messenger named Sydney usually called for the correspondence and sometimes deponent received a telephone message to take the letters to 5 Suffolk Street. Checks were signed S. R. Bunt & Co. in Samuel Taylor's handwriting.

According to this same deponent, she was told either by Taylor or petitioner—she cannot remember who—in the Autumn of 1936 about Hawker Aircraft shares. In

about a dozen instances these shares were switched to Gold Reefs of West Africa shares. People called at the office asking to see Taylor, and when he was ill deponent telephoned Miss Brabyn at 5 Suffolk Street. Deponent left at the beginning of November, 1936. About July, 1936, petitioner told deponent to go to an office in King William Street where she stayed for a little while, and the name of the firm was Irving & Co. A Mr. Stephens or Stephenson was there, and deponent about every day took correspondence addressed to Irving & Co. to 5 Suffolk Street.

According to the deposition of Ruby I. Croucher, this deponent is a typist. She met Spiro in 1925 and entered his employ in January, 1936, at 5 Suffolk Street, where she worked for Scottish Gas Utilities Corporation Ltd., and Anglo-African Corporation Ltd. When she began to work there, the staff consisted Miss Brabyn, Mrs. Lowry, Mr. Taylor, petitioner, Mr. Sharp, and a house-keeper in addition to herself. Deponent heard petitioner called Strakosch. She took instructions mainly from Spiro, and in his absence from Taylor, who was secretary of one company. [125] Petitioner gave instructions to her with reference to Maclean & Henderson. She typed letters and answered the telephone during the lunch hour in Mrs. Brabyn's absence. Spiro and petitioner dictated letters with regard to Maclean and Henderson. The paper had a Broad Street address. When Maclean & Henderson's paper ran short she mentioned this to petitioner and got some more.

According to this same deponent, stationery of S. R. Bunt & Co. was at 5 Suffolk Street. Sometimes Spiro dictated letters with reference to this concern and so did petitioner. When stationery was required for that com-

pany, she may have mentioned it to Taylor or petitioner. Taylor dictated letters for Scottish Gas Utilities Corporation Ltd. She saw J. W. R. Elphinstone a few times at 5 Suffolk Street. W. Underhill came there very seldom and came to see Spiro. Early in November, 1936, Spiro told deponent to work at S. R. Bunt & Co. Sometimes letters were collected there by a messenger from Suffolk Street named Sydney. Deponent was there three weeks. Petitioner never came there. Keith Lambert was running S. R. Bunt & Co. Deponent left December 5, 1936 after giving a week's notice to Spiro.

According to the deposition of Rose K. Watson, this deponent is a shorthand-typist, and in May, 1936 was employed by Spiro, whom she interviewed at 5 Suffolk Street, and there she met Miss Brabyn who took her to 16 Conduit Street. She remained there about one week, and was paid her wages by petitioner whom she knew as Graham. From there, she went to 36 New Broad Street in May, 1936, upon Spiro's instruction. She was accompanied by petitioner. There she met W. Underhill, the manager and remained there in the employ of Maclean & Henderson until [126] January, 1937. There Underhill usually gave instructions to her, including the typing of letters dealing with Gold Reefs of West Africa shares. He signed the checks and endorsed them. He also attended to the post and when he left, Mr. Green did so.

According to this same deponent petitioner came to the office quite frequently. There she saw Samuel Taylor, once or twice with petitioner. She heard of Richards, but never met him. She also met a Mr. Henderson and a Mr. Lambert. Underhill would speak to parties calling on the telephone and later Green did so. She also typed letters relating to West African Mining Corporation. In

February, 1937, at Miss Brabyn's request, deponent went to 7 Gresham Street, where she worked at the office of West African Mining Corporation under the direction of Mr. Engel, whom she had previously met at the office of Gold Reefs of West Africa Ltd. She remained there two or three days.

According to the deposition of Ethel M. Lowry, this deponent is a typist. In May, 1932, she met Spiro, but he was introduced to her as Mr. Stanley. He employed her to work in the office of Scottish Gas Utilities Corporation Ltd. and take instructions from a Mr. Aprange. The Anglo-African Corporation Ltd. had an office in the same place. In 1934 Samuel Taylor became secretary and director of Scottish Gas Utilities Corporation Ltd. and deponent took instructions from him. Occasionally she went to Spiro's office at 5 Suffolk Street, and there letters were dictated to her to clients of Maclean & Henderson. Spiro asked her to sign the letters. He also dictated two or three letters addressed to clients of S. R. Bunt & Co. Deponent has seen Spiro write in various disguises. She has known petitioner since 1932 as Strakosch. [127]

According to the deposition of A. M. Jones, this deponent is managing director of Mills Conduit Investments Ltd. with offices in 16 Conduit Street. In April, 1936, the company let the third and fourth floors to Spiro, who came there frequently. Deponent does not remember seeing petitioner there. Deponent knew Spiro as the proprietor of Maclean & Henderson. From time to time he borrowed money from deponent's company. Between August 24, 1934, and January 29, 1937, deponent's firm paid, by way of advances, a number of checks in transactions wherein Spiro represented Maclean and Henderson.

According to this same deponent, early in 1936 Spiro stated he was going abroad. He brought petitioner and introduced him as his assistant and stated if petitioner should want any money to let him have it and he, Spiro, would be responsible for it. He introduced Samuel Taylor in the same way and stated that the latter was his brother-in-law. In petitioner's case he deposited as collateral security Maclean & Henderson checks. Deponent has produced at the trial of Taylor, Elphinstone and Underhill the checks paid to Spiro, petitioner and Taylor.

According to the deposition of D. Kerman, this deponent is managing director of Dunn Trust Limited. In the early part of 1934 he met Spiro and beginning January, 1935, his firm advanced to Spiro large sums, totaling £95,000. Spiro acted on behalf of Maclean & Henderson, and was also associated with S. R. Bunt & Co., and claimed he was substantially in control of both concerns. From time to time transactions were had involving various securities. In the early summer of 1936 Spiro introduced petitioner and Samuel Taylor to deponent, stating they were his assistants and in charge of his office while he was abroad. [128] One or two transactions were carried out with petitioner and Taylor, who deposited Maclean & Henderson checks. Deponent has produced at the trial of Taylor and Elphinstone and Underhill the checks paid to Spiro, petitioner and Taylor in connection with the loans.

According to the deposition of C. W. Williams, this deponent is a chartered accountant. He has examined the books and also the banking accounts of Maclean & Henderson, but no cash book has been found. In the clients' ledger he examined accounts in the names of J. H. Turner, R. H. East, P. Daniel, W. Fothergill, F.

Plater, J. C. Russell and W. Scott. In certain cases transactions claimed by them are not entered in the books.

According to this same deponent, he has examined the banking account of Scottish Gas Utilities Corporation Ltd., and has found that on December 31, 1934, when payment of interest on debentures and notes was due, the balance in the account was 13s/5d. On January 3, 1935, a check for £3,030 was paid into this account from Anglo-African Corporation. The account of the latter company on the day preceding the payment of this check had in it a credit balance of £17.7.3., but on January 2, 1935, a check for £4,032 from the account of Maclean & Henderson went into the Anglo-African Corporation account. At the next date, namely, July 1, 1935, when such interest became due, Scottish Gas Utilities Corporation had a credit balance of £13.16.11. Two checks totaling £2,297.10.0. drawn by Dunn Trust Ltd. to Spiro on July 5, 1935, were paid into this account. A similar transaction was carried through on January 3, 1936, through Mills Conduit Investments Ltd. at a time when the credit balance of Scottish Gas Utilities Corporation account [129] consisted of 10s/11d. At no time after the beginning of 1935 does the current account of that company show the receipt of any other substantial sums.

According to this same deponent, the transactions between Spiro and Mills C. I. Ltd. and between Spiro and Dunn Trust Ltd. were handled by him on behalf of Maclean & Henderson. In the transactions with Mills C. I. Ltd. Spiro, petitioner and Taylor received checks totaling £189,585.10.6. between August, 1934, and September, 1936, of these 116 representing over £137,000 were converted into cash and checks to the value of over

£19,000 were paid into Anglo-African Corporation, Ltd. In similar transactions with Dunn Trust Ltd. between January, 1935, and February, 1937, Spiro, petitioner and Taylor received checks to the total amount of £95,848.13.8. Of these, 58 were converted into cash representing over £64,000 and checks to the value of over £13,500 were paid to Anglo-African Corp. Ltd. By this method Spiro was able to convert securities sent by clients of Maclean & Henderson into ready money.

According to the deposition of G. E. W. Bridge, this deponent is secretary of the Trustees of a certain estate owning the property of 1 Royal Exchange Avenue; that an agreement was entered into on April 20, 1936, that previously he had an interview with Taylor and that petitioner accompanied the person who signed the agreement; also that shortly before Christmas, 1936, Taylor's name was removed from outside the building and replaced by the name of Keith Lambert, and that the premises were vacated about February 26, 1937. [130]

According to the deposition of E. Clayton, this deponent is a solicitor and chief clerk in the Department of the Director of Public Prosecutions, and that he has correctly stated the substance of various provisions of the criminal law.

According to the deposition of T. Gankerseer, this deponent is a Detective Inspector of the City of London Police, that he has made inquiries to locate Spiro and petitioner, but their present whereabouts appears to be unknown and he has reason to believe that they had left England.

And it further appearing that under the terms of the applicable extradition treaty, more particularly Article 8

thereof, that extradition of fugitive criminals shall be carried out “in conformity with the laws regulating extradition for the time being in force in the territory from which the surrender of the fugitive criminal is claimed”, and particularly Article 9 thereof, that “the extradition shall take place only if the evidence be found sufficient, according to the laws of the” country applied to, “to justify the committal of the prisoner for trial, in case the crime or offense had been committed in the territory of such” country, and

It further appearing that the law of the State of California requires that upon preliminary examination of the defendant with a view of ascertaining whether or not he shall be held to answer to the Superior Court for a felony, he shall be so held if “it appears from the examination that a public offense has been committed and there is sufficient cause to believe the defendant guilty thereof.” (Cal. Penal Code, Sections 871 and 872.) [131]

The Court Concludes that in granting leave to file the second amended complaint, the Commissioner did not commit any abuse of discretion, and further that petitioner is estopped to attack such ruling.

The Court Further Concludes that the acts described in the second amended complaint constitute crimes respecting which extradition may be had under the applicable extradition treaty.

The Court Further Concludes that the evidence presented at the hearing before the Commissioner tends to prove that one Stanley Grove Spiro, alias Stanley, alias Royston, and also various other persons, participated in the commission of such crimes.

The Court Further Concludes that the following named individuals are the only persons alleged to have been the victims of one or more of the offenses described in said second amended complaint, and are the only persons with respect to whom any crime is alleged to have been committed, and that each of the offenses described in said second amended complaint is alleged to have been committed with respect to one of the following named individuals, to-wit: John Henry Turner, Reginald Harry East, Peter Daniel, Frank Plater, William Scott, John Cooper Russell, William Fothergill, Francis Jackson and Charles Henry Row.

The Court Further Concludes that the offense described in said second amended complaint, to-wit, Paragraph VIII-A, subdivision (a) thereof, namely, an offense committed with respect to said Turner, arose out of certain transactions wherein said Turner dealt with one J. Elphinstone, who [132] represented Maclean & Henderson, and wherein subsequently said Turner again dealt with said J. Elphinstone and also with one Samuel Taylor, who also represented Maclean & Henderson, that some of these transactions took place at the office of said firm, located at 5 Suffolk Street, and the remaining transactions took place at the residence of said Turner, and that at no time did petitioner directly or indirectly make any representations to said Turner or otherwise deal with him.

The Court Further Concludes that the offenses described in said second amended complaint, to-wit, Paragraph VIII-A, subdivisions (b), (c-1) and (c-2) thereof, namely, offenses committed with respect to said East, arose out of certain transactions wherein said East dealt with said Spiro who, under the name of Royston, repre-

senting Maclean & Henderson, and that at no time did petitioner directly or indirectly make any representation to said East or otherwise deal with him.

The Court Further Concludes that the offenses described in said second amended complaint, to-wit, Paragraph VIII-A, subdivisions (d) and (e) thereof, namely, offenses committed with respect to said Daniel, arose out of certain transactions wherein said Daniel dealt with said Spiro who, under the name of Royston, represented Maclean & Henderson, that after said Daniel had delivered to said Spiro the securities described in subdivision (d) of said Paragraph VIII-A, for the purpose of having the same sold and applying the proceeds thereof to purchase other securities on behalf of said Daniel, and after the latter had also given to said Spiro the sum specified in subdivision (e) of said Paragraph VIII-A for the purpose of purchasing [133] other securities on behalf of said Daniel, that is to say, from two to four months after these transactions had occurred, and when said Daniel was inquiring for the securities which he had thus bought, petitioner informed him that certificates were often held up, and that at no time did petitioner directly or indirectly make any other representation to said Daniel or otherwise deal with him.

The Court Further Concludes that the offense described in said second amended complaint, to-wit, Paragraph VIII-A, subdivision (f) thereof, namely, an offense committed with respect to said Plater, arose out of certain transactions wherein said Plater dealt with one Richards, who represented himself as the manager of Maclean & Henderson, and that at no time did petitioner directly or indirectly make any representation to said Plater or otherwise deal with him.

The Court Further Concludes that the offenses described in said second amended complaint, to-wit, Paragraph VIII-A, subdivisions (g-1), (g-2) and (g-3) thereof, namely, offenses committed with respect to said Scott, arose out of certain transactions wherein said Scott dealt with said Richards and also with said Spiro, who each represented Maclean & Henderson, that at no time did petitioner directly or indirectly make any representation to said Scott or otherwise deal with him.

The Court Further Concludes that the offense described in said second amended complaint, to-wit, Paragraph VIII-A, subdivision (h) thereof, namely, an offense committed with respect to said Russell, arose out of certain transactions wherein said Russell dealt with one Richards, who represented [134] Maclean & Henderson, that at no time did petitioner directly or indirectly make any representation to said Russell or otherwise deal with him.

The Court Further Concludes that the offenses described in said second amended complaint, to-wit, Paragraph VIII-A, subdivisions (j-1), (j-2) and (j-3) thereof, namely, offenses committed with respect to said Fothergill, arose out of certain transactions wherein said Fothergill dealt with one Richards, who represented himself as London Office Manager of Maclean & Henderson, and wherein later said Fothergill dealt with one Mortimer, who represented Maclean & Henderson, and that at no time did petitioner directly or indirectly make any representation to said Fothergill or otherwise deal with him.

The Court Further Concludes that the offenses described in said second amended complaint, to-wit, Paragraph VIII-A, subdivisions (k-1), (k-2) and (k-3) thereof, namely, offenses committed with respect to said Jackson, arose out of certain transactions wherein said

Jackson dealt with said Spiro who used the name of Stanley and who represented S. R. Bunt & Co., and wherein said Jackson later dealt with one Mortimer who represented S. R. Bunt & Co., and that these transactions took place and said offenses were committed after petitioner had left the employ of S. R. Bunt & Co., and that at no time did petitioner, directly or indirectly, make any representation to said Jackson or otherwise deal with him.

The Court Further Concludes that the offenses described in said second amended complaint, to-wit, Paragraph VIII-A, subdivisions (1-1) and (1-2) thereof, namely, offenses committed with respect to said Row, arose out of certain [135] transactions wherein said Row dealt firstly over the telephone with a party claiming to represent S. R. Bunt & Co. but whose identity is unknown, and later dealt with one Mortimer who represented S. R. Bunt & Co., and still later dealt with one Keith Lambert who represented S. R. Bunt & Co., and that these transactions took place and said offenses were committed after petitioner had left the employ of S. R. Bunt & Co., and that at no time did petitioner directly or indirectly make any representation to said Row or otherwise deal with him.

The Court Further Concludes that petitioner did not at any time own, also that he did not at any time represent himself as owning, and that he was not at any time held out as owning, any interest either in the firm of Maclean & Henderson or the firm of S. R. Bunt & Co., also that he was not the manager of either of said firms, also that he did not represent either of said firms in any of the transactions relating to the deposit, with either of said firms, of any of the securities or any of the checks or funds by any of the persons mentioned in said second amended

complaint, also that he did not receive any of the securities or any of the checks or funds deposited with either of said firms as alleged in said second amended complaint, and also that he did not represent either of said firms in any of the transactions upon which any of the offenses described in said second amended complaint are based.

The Court Further Concludes that the evidence presented before the Commissioner was insufficient to justify a finding to the effect that there was a probability that any one of the specific crimes described in said second amended complaint had been directly committed by the petitioner or that he had [136] directly participated in the commission of the same; also that such evidence was insufficient to justify a finding to the effect that petitioner had not merely aided in the commission of any one of the specific crimes described in said second amended complaint, but also had had knowledge of the wrongful purpose of any of the persons engaged in the perpetration of any one of said specific crimes and had counseled and had encouraged such person in the commission thereof; also that such evidence was insufficient to justify a finding to the effect that a person of ordinary caution and prudence would believe and conscientiously entertain a strong suspicion that the petitioner was guilty of any one of the specific crimes described in said second amended complaint; also that such evidence was insufficient to justify a finding to the effect that there was reasonable ground to believe that any one of the specific crimes described in said second amended complaint had been committed by petitioner or that he had aided and abetted in the com-

mission thereof; also that if such evidence had been presented at a preliminary examination before a committing magistrate in the State of California, for the purpose of determining whether a case was thereby made out which would justify holding the petitioner for trial in the superior court of said state upon any of the specific crimes described in said second amended complaint, the same would have been insufficient to justify holding him for trial; and also that the Commissioner did not have before him competent legal evidence on which to exercise his judgment as to whether the facts were sufficient to establish the criminality of petitioner with respect to any of said crimes, for the purposes of extradition. [137]

The Court Therefore Concludes that petitioner is entitled to his discharge under the writ of *habeas corpus*.

See:

In re Luis Orteiza y Cortes, 136 U. S. 330, 334, 335;

Charlton v. Kelly, 229 U. S. 447, 456;

Hatfield v. Guay, 87 F. (2d) 358, 361, 362, 364;

Curreri v. Vice, 77 F. (2d) 130, 131, 132;

People v. Terman, 40 Pac. (2d) 915, 916.

(Endorsed): Filed Mar. 18, 1938. [138]

At a stated term, to-wit: the February Term, A. D. 1939, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday, the 18th day of March in the year of our Lord one thousand nine hundred and thirty-eight.

Present :

The Honorable Harry A. Hollzer, District Judge.

(Title of Cause.)

The Court having this day filed its memorandum of conclusions herein,

It Is Ordered, for the reasons set forth in said memorandum that petitioner be discharged under the writ of *habeas corpus* granted herein.

An exception is allowed to respondent.

108/662. [139]